

## **DECLARATION OF IAN A. MACKECHNIE**

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Ian A. Mackechnie. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.

2. I first heard of Jay Peak in or about early 2009 when I conducted an internet search about EB-5 investments projects. I was interested in obtaining an EB-5 visa and saw that Jay Peak offered investments in EB-5 projects.

3. I called Jay Peak and spoke with Douglas Hulme, a representative of the company. Mr. Hulme told me about an EB-5 investment project that was being offered at the time called the Jay Peak Hotel Suites Phase II LP ("Phase II"). He provided me with a general description of Phase II and the EB-5 Visa program. He said that the EB-5 Visa Program allows foreign investors seeking permanent resident status to invest in a business and obtain a conditional green card and that after approximately two years, I would be able to have the conditions removed from my green card if I could show that my investment in Phase II created a certain number of jobs.

4. Mr. Hulme also provided me with written materials about the Phase II project offering. A copy of the offering materials I received is attached as Exhibit A.

5. After speaking with Mr. Hulme and reviewing the offering materials he provided, I decided to invest \$500,000 in Jay Peak's Phase II project. In May 2009, I wired a total of \$540,000, consisting of \$500,000 to be invested in the Phase II project, plus an additional \$40,000 toward an administrative fee, to an escrow account at People's United Bank. A copy of the wire confirmation is attached as Exhibit B.

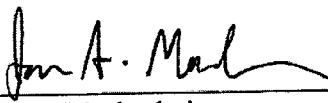


6. After investing in Phase II, I began receiving periodic communications from William Stenger and others at Jay Peak updating me on the progress of the Phase II project. An example of the updates I received from Mr. Stenger is attached as Exhibit C.

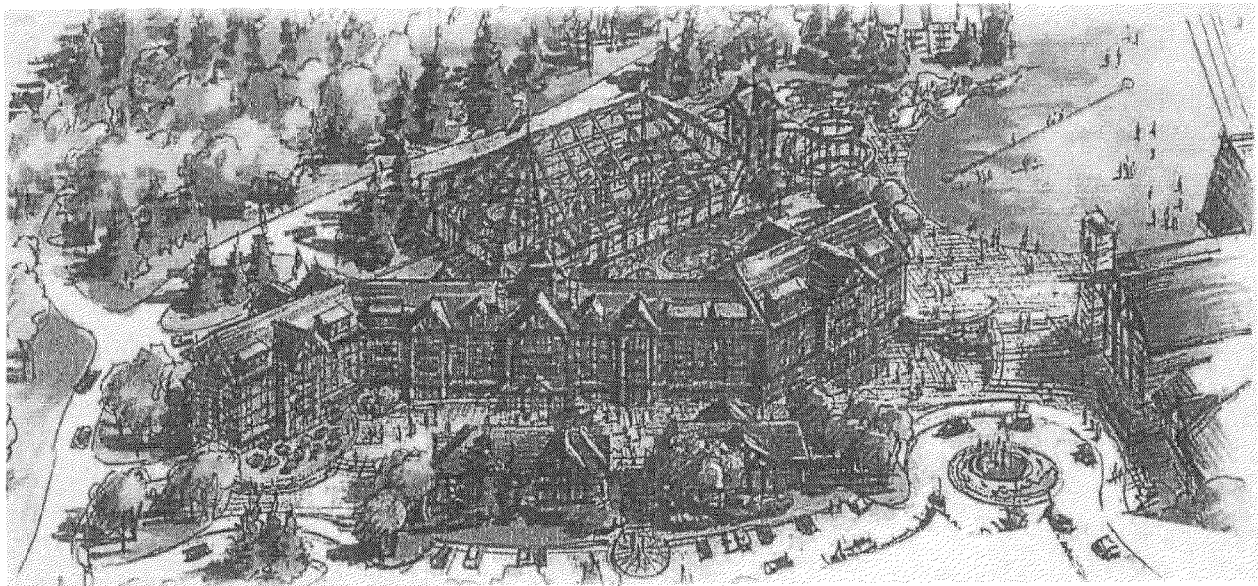
7. At no time did Mr. Hulme, Mr. Stenger, or anyone else at Jay Peak, tell me that Phase II investor monies could or would be used by the principal of Jay Peak to purchase Jay Peak, as collateral for, or to pay off, margin or other loans extended to Jay Peak or another Jay Peak EB-5 limited partnership, or to pay expenses associated with other EB-5 projects or otherwise commingled with investor funds from other EB-5 projects. I also was never told that Jay Peak and its principals could take their construction supervision fees before any construction work had actually commenced or that the money I invested would not be held in a FDIC-insured account.

8. I never would have invested with Jay Peak had I been given this information.

I declare under penalty of perjury that the foregoing is true, correct, and made in good faith. Executed on this 20th day of November, 2015.

  
\_\_\_\_\_  
Ian A. Mackechnie  
Jay Peak Hotel Suites Phase II Limited Partner

A



## Jay Peak Hotel Suites Phase II L.P.

A Limited Partnership chartered in the State of Vermont

An investment opportunity within a Ski and Golf Resort located in the State of Vermont, a US government designated regional center, and structured to assist investors obtain EB-5 visa giving Lawful Permanent Residency in the United States.

**Private  
Offering  
Memorandum**







## **JAY PEAK HOTEL SUITES PHASE II L.P.**

A Limited Partnership Chartered In the State Of Vermont

<b>SECTION 1</b>	<b>THE OFFERING</b>
<b>SECTION 2</b>	<b>THE BUSINESS PLAN</b>
<b>SECTION 3</b>	<b>THE LIMITED PARTNERSHIP AGREEMENT</b>
<b>SECTION 4</b>	<b>THE SUBSCRIPTION DOCUMENTS</b>
<b>SECTION 5</b>	<b>THE EXHIBITS</b>

*This Offering Memorandum contains important information about the Limited Partnership to which Investors should become familiar prior to making investment therein. Please read all information and retain this Offering Memorandum for future reference.*

**THESE SECURITIES ARE SUBJECT TO A HIGH DEGREE OF RISK – SEE “RISK FACTORS”**

**THE DATE OF THIS MEMORANDUM IS MARCH 31<sup>ST</sup> 2008 AS AMENDED JUNE 20<sup>TH</sup> 2008 UPON COMPLETION OF STOCK TRANSFER OF JAY PEAK INC.**

### **CONFIDENTIALITY AGREEMENT AND COPYRIGHT ACKNOWLEDGEMENT**

A prospective investor into Jay Peak Hotel Suites L.P. (the “Partnership”), by accepting receipt in what ever manner or form, of this Private Offering Memorandum (the “Memorandum”), agrees not to duplicate, disseminate or to furnish copies of the Memorandum or any part thereof in any form whatsoever, including but not limited to electronic means, or to divulge information garnered from this Memorandum to persons other than such investor’s investment and tax advisors, accountants and legal counsel instructed solely to assist the investor in the evaluation, and such advisors, accountants and legal counsel together with the prospective investors and any other persons to which this Memorandum comes into their possession (i) are prohibited from duplicating, disseminating or using the Memorandum and any information contained herein in any manner other than to determine whether the investor wants to invest into the Partnership, (ii) acknowledge the copyright of the authors in the Memorandum, and that copyright violators may be prosecuted and (iii) acknowledge that written translation of this Memorandum, or any part thereof, into any other language is not authorized. The agreements made herein shall survive if the investor withdraws from the Jay Peak Hotel Suites project for whatever reason, whenever said withdrawal should occur, and shall continue in full force and effect regardless of the eventual result of any application for lawful permanent residence in the United States of America made in conjunction with investment in this project. If the investor withdraws from the project for whatever reason the investor shall immediately return to the General Partner of the Partnership his or her copy of this Private Offering Memorandum, together with any copies furnished by the investor to such investor’s advisors or counsel.

### **IMPORTANT NOTICE – NO LEGAL ADVICE**

*The contents of this Memorandum are not intended as an interpretation of immigration law or legal advice for any purpose, and any prospective investor should not consider anything in this Memorandum as such advice or as a legal opinion or investment advice on any matters, and should seek independent professional advice.”*



# Jay Peak Hotel Suites Phase II L.P. Offering Memorandum

## Section 1 - The Offering



## CONTENTS

<b>SECTION 1</b>	<b>1</b>
<b>THE OFFERING</b>	<b>1</b>
<b>IMPORTANT INFORMATION</b>	<b>4</b>
<b>INVESTOR SUITABILITY STANDARDS</b>	<b>8</b>
<b>IMMIGRATION</b>	<b>10</b>
OVERVIEW	10
FOR EB-5 INVESTORS	10
<b>SUMMARY OF THE OFFERING</b>	<b>12</b>
INTRODUCTION	12
SECURITIES BEING OFFERED	12
PURCHASE TERMS	12
EXEMPTION FROM REGISTRATION	12
THE LIMITED PARTNERSHIP	13
THE GENERAL PARTNER	13
PROJECT SUMMARY	13
RELATED CONCURRENT DEVELOPMENT OF SECOND HOMES BY RESORT OWNER	14
JAY PEAK MARKET REVIEW	14
USE OF PROCEEDS	15
LAND ACQUISITION	15
THE CONDOMINIUM ASSOCIATION	15
COMPLETION OF PROJECT	15
OFFERING MEMORANDUM ONLY AVAILABLE IN US ENGLISH LANGUAGE	16
FEDERAL TAX CONSIDERATIONS	16
TRANSFER RESTRICTIONS	16
EXIT STRATEGIES	17
<b>RISK FACTORS (ALSO SEE IMMIGRATION RISK FACTORS)</b>	<b>17</b>
<b>IMMIGRATION MATTERS</b>	<b>20</b>
OVERVIEW	20
AMOUNT OF INVESTMENT	21
COUNTING JOBS CREATED	21
THE STATE OF VERMONT - A REGIONAL CENTER	22
THE I-526 PETITION PROCESS	23
THE I-526 PETITION APPROVAL NOT GUARANTEED	24
CONSULAR PROCESSING OR ADJUSTMENT OF STATUS	24
CONSULAR PROCESSING	25
VISA ISSUANCE NOT GUARANTEED	26
ADMISSION AFTER CLPR VISA ISSUED NOT GUARANTEED	26
ADMISSION AFTER INVESTING, FILING THE I-526 OR DURING CONSULAR PROCESSING	26
ADJUSTMENT OF STATUS	26
TRAVEL DURING ADJUSTMENT OF STATUS PROCESSING	28

EMPLOYMENT DURING THE ADJUSTMENT OF STATUS PROCESSING .....	28
ADJUSTMENT OF STATUS CANNOT BE GUARANTEED.....	28
REMOVAL OF CONDITIONS.....	29
REMOVAL OF CONDITIONS NOT GUARANTEED .....	29
<b>IMMIGRATION RISK FACTORS .....</b>	<b>30</b>
GENERAL .....	30
APPROVAL OF INVESTMENTS IN THE PROJECT.....	30
PROCESSING TIMES .....	30
GOVERNMENT FILING FEES.....	30
LIMITATIONS ON RETURN OF FUNDS IF I-526 PETITION IS DENIED.....	31
ATTAINING LAWFUL PERMANENT RESIDENCE.....	31
GROUNDS FOR EXCLUSION.....	32
NO RETURN OF FUNDS IF VISA OR ADJUSTMENT OF STATUS IS DENIED.....	33
CONDITIONAL LAWFUL PERMANENT RESIDENCE .....	33
NO REGULATIONS REGARDING REMOVAL OF CONDITIONS.....	34
NUMERICAL QUOTAS .....	34
EXPIRATION OF THE REGIONAL CENTER PILOT PROGRAM.....	34
ACTIVE PARTICIPATION IN LIMITED PARTNERSHIP BUSINESS.....	35
RISKS ATTENDANT TO THE EB-5, FIFTH PREFERENCE VISA STATUS .....	36
FAMILY RELATIONSHIPS.....	36

## SECTION 1

JAY PEAK HOTEL SUITES PHASE II L.P.  
(A VERMONT LIMITED PARTNERSHIP)  
4850 VT ROUTE 242 JAY, VERMONT 05859

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### A PRIVATE OFFERING OF LIMITED PARTNERSHIP INTERESTS

ALL OF THE LIMITED PARTNERSHIP INTERESTS ARE BEING OFFERED BY JAY PEAK HOTEL SUITES PHASE II L.P., THE ISSUER. THERE IS NO PUBLIC MARKET FOR THESE INTERESTS. SEE RISK FACTORS, P. 17

## THE OFFERING

US\$ 75,000,000; MINIMUM INVESTMENT FOR EACH LIMITED PARTNERSHIP INTEREST IS \$500,000

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JAY PEAK HOTEL SUITES PHASE II L.P. WILL, WITHIN THE STRATEGIC CENTER OF JAY PEAK RESORT, A SKI AND GOLF RESORT COMPLEX ESTABLISHED FOR OVER 50 YEARS, LOCATED IN JAY, VERMONT (THE "RESORT"), UNDERTAKE CERTAIN REAL ESTATE DEVELOPMENT AND BUSINESS ACTIVITIES WHICH WILL INCLUDE: (1) ACQUISITION OF TITLE TO ONE OR MORE PARCELS OF REAL ESTATE AT THE RESORT FROM JAY PEAK, INC., A VERMONT CORPORATION WITH ITS PRINCIPAL PLACE OF BUSINESS IN JAY, VERMONT (THE "RESORT OWNER"), AND CONSTRUCTION OF A MULTI-STOREY BUILDING (THE "HOTEL BUILDING") AND ERECTING AN ADMINISTRATIVE OFFICE AND A GROCERY AND DELI BUILDING (THE "ADMINISTRATIVE OFFICES BUILDING"); (2) ON LAND RETAINED BY THE RESORT OWNER, ERECTING IN SEPARATE BUILDINGS A GOLF CLUBHOUSE, INDOOR ICE ARENA, BOWLING CENTER AND AN INDOOR WATER PARK (COLLECTIVELY, THE "ANCILLARY PROJECTS"), AND (3) LEASING BACK FROM THE RESORT OWNER FOR NOMINAL CONSIDERATION THE ANCILLARY PROJECTS AND OPERATING THE ANCILLARY PROJECTS FOR UP TO 10 YEARS PURSUANT TO THE TERMS OF THE LEASES.

THE PARTNERSHIP WILL CREATE A CONDOMINIUM REGIME TO INCLUDE THREE CONDOMINIUM UNITS WITH APPURTENANT COMMON AREAS AND LIMITED COMMON AREAS ("THE CONDOMINIUM REGIME"). THE THREE CONDOMINIUM UNITS WILL BE: (1) THE "HOTEL UNIT", TO BE OWNED BY THE PARTNERSHIP AND COMPRISED OF FOUR FLOORS OF THE HOTEL BUILDING, OCCUPIED BY THE HOTEL SUITES, FURNISHED AND FIT UP FROM THE PROCEEDS OF THIS OFFERING AND OPERATED BY THE PARTNERSHIP AS AN ALL-SUITES HOTEL (THE "HOTEL"); (2) THE "HOTEL BUILDING RESORT OWNER UNIT", TO BE OWNED BY THE RESORT OWNER AND COMPRISED OF ONE FLOOR, AND PORTION OF A SECOND FLOOR, OF THE HOTEL BUILDING, AND OPERATED BY THE RESORT OWNER AS SPA, CONFERENCE CENTER, RETAIL AND RESTAURANT FACILITIES WITH BUILD-OUT, FURNISHING AND FIT UP TO BE DONE BY THE RESORT OWNER; AND, (3) THE "ADMINISTRATIVE BUILDING UNIT" TO BE OWNED BY THE RESORT OWNER AND COMPRISED OF THE ADMINISTRATIVE OFFICES BUILDING WITH BUILD-OUT, FURNISHING AND FIT UP TO BE DONE BY THE RESORT OWNER. UNITS 2 AND 3, COLLECTIVELY, WILL BE KNOWN AS THE "RESORT OWNER UNITS."

THE JAY PEAK HOTEL SUITES PHASE II L.P. PROJECT, AMOUNTING TO \$75.0 MILLION OF DEVELOPMENT COSTS TO BE FINANCED PURSUANT TO THIS OFFERING MEMORANDUM, WILL BE SUPPLEMENTED WITH THE ADDITIONAL INVESTMENT IN CASH OR VALUE OF \$12.0 MILLION PROVIDED BY THE RESORT OWNER, RAISING THE ESTIMATED OVERALL DEVELOPMENT COSTS TO \$87,000,000 (SEE SUMMARY OF OFFERING; PROJECT SUMMARY).

BY CREATING THIS HOTEL, THE CONDOMINIUM REGIME AND THE ANCILLARY PROJECTS, AND AIDING THE FURTHER EXPANSION AND TRANSITION TOWARDS MAKING JAY PEAK AN "ALL SEASONS RESORT," JAY PEAK HOTEL SUITES PHASE II L.P., WILL CREATE MANY NEW PERMANENT JOBS AT THE RESORT, IN THE GREATER JAY PEAK REGION, AND WITHIN THE STATE OF VERMONT AND THE UNITED STATES OF AMERICA.

ALL LIMITED PARTNERSHIP INTERESTS ARE PAYABLE IN FULL UPON SUBSCRIPTION (THE "OFFERING"). THE MINIMUM CAPITAL CONTRIBUTION SHALL BE \$500,000, PLUS A NONREFUNDABLE ADMINISTRATION AND SYNDICATION FEE OF \$50,000 FOR COSTS AND EXPENSES IN CONNECTION WITH THIS OFFERING, FOR A TOTAL SUBSCRIPTION AMOUNT OF \$550,000. THERE IS NO MINIMUM SALE REQUIREMENT, EXCEPTING FOR FOREIGN INVESTORS SEEKING QUALIFICATION AS AN "ALIEN ENTREPRENEUR" WHERE THE MINIMUM AMOUNT, CURRENTLY \$500,000, IS SET BY LAW. THE GENERAL PARTNER MAY IN ITS SOLE DISCRETION WAIVE THE MINIMUM SUBSCRIPTION AMOUNT AND RAISE THE MINIMUM AMOUNT IN THE FUTURE. THE OFFERING WILL CONTINUE UNTIL IT HAS RAISED \$75,000,000 UNLESS TERMINATED SOONER BY THE GENERAL PARTNER IN ITS

SOLE DISCRETION. THIS OFFERING SUPERSEDES IN ITS ENTIRETY ALL PRIOR OFFERINGS MADE BY THE ISSUER AS TO PHASE II, IF ANY.

WHILE THIS INVESTMENT OFFERING HAS BEEN STRUCTURED SO THAT INVESTORS MAY MEET THE REQUIREMENTS UNDER 8 U.S.C. § 1153 (B)(5)(A) - (D); INA § 203 (B)(5)(A) - (D) OF THE IMMIGRATION & NATIONALITY ACT (THE "ACT") AND QUALIFY UNDER THIS PROGRAM (THE "PROGRAM") TO BECOME ELIGIBLE FOR ADMISSION TO THE UNITED STATES OF AMERICA AS LAWFUL PERMANENT RESIDENTS AND CONFER THIS BENEFIT UPON THEIR SPOUSES AND UNMARRIED, MINOR CHILDREN, THE INVESTMENT OFFERING IS ALSO OPEN TO INVESTORS NOT SEEKING IMMIGRATION BENEFITS.

YOU SHOULD DEPEND SOLELY ON THE INFORMATION CONTAINED IN THIS PRIVATE PLACEMENT MEMORANDUM. IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED OR APPROVED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THESE AUTHORITIES HAVE NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE U.S. SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR SELLING LITERATURE. THESE SECURITIES ARE OFFERED UNDER ONE OR MORE EXEMPTIONS FROM REGISTRATION; HOWEVER, THE COMMISSION HAS NOT MADE AN INDEPENDENT DETERMINATION THAT THESE SECURITIES ARE EXEMPT FROM REGISTRATION.

UK INVESTORS: THIS OFFERING DEFINED AS A PROMOTION IN THE UNITED KINGDOM HAS NOT BEEN APPROVED BY AN AUTHORIZED PERSON WITHIN THE MEANING OF THE FINANCIAL SERVICES AND MARKETS ACT OF 2000. RELIANCE ON THIS OFFERING (PROMOTION) FOR THE PURPOSE OF ENGAGING IN ANY INVESTMENT ACTIVITY MAY EXPOSE AN INDIVIDUAL TO SIGNIFICANT RISK OF LOSING ALL OF THE PROPERTY OR OTHER ASSETS INVESTED.

INVESTMENT IN SMALL BUSINESSES INVOLVES A HIGH DEGREE OF RISK. AN INVESTMENT IN INTERESTS OF THE LIMITED PARTNERSHIP INVOLVES SUBSTANTIAL RISKS INCLUDING BUT NOT LIMITED TO RELIANCE AND CONTINUITY OF MANAGEMENT, THIRD PARTY SERVICES, GENERAL MARKET FORCES AND RISKS, AND COMPLEX TAX ISSUES. INVESTORS SHOULD NOT INVEST ANY FUNDS IN THIS OFFERING UNLESS THEY CAN AFFORD TO LOSE THEIR ENTIRE INVESTMENT. SEE THE "RISK FACTORS" SECTION OF THE "SUMMARY OF THE OFFERING" AND THE "RISK FACTORS" SECTION OF THE FINANCIAL DATA FOR THE RISK FACTORS THAT MANAGEMENT BELIEVES PRESENT THE MOST SUBSTANTIAL RISKS TO AN INVESTOR IN THIS OFFERING. THERE IS CURRENTLY NO PUBLIC MARKET FOR THE INTERESTS AND TRANSFERABILITY OF THE INTERESTS WILL BE LIMITED.

THIS OFFERING IS MADE ONLY TO "ACCREDITED INVESTORS" AS DEFINED IN RULE 501(A) OF REGULATION D, AND WHO ARE SOPHISTICATED IN FINANCIAL AND BUSINESS MATTERS. EACH INTENDING INVESTOR SHOULD OBTAIN THE ADVICE OF THEIR OWN PROFESSIONAL ADVISORS INCLUDING LEGAL, FINANCIAL, TAX INVESTMENT AND OTHER ADVISORS INCLUDING IMMIGRATION IF APPLICABLE BEFORE DECIDING TO INVEST.

	PRICE TO INVESTORS	PROCEEDS TO LIMITED PARTNERSHIP
MINIMUM INVESTMENT	\$ 500,000.00	\$ 75,000,000
		PROCEEDS TO JAY PEAK, INC.
ADMINISTRATION FEE	\$ 50,000.00	\$ 7,500,000

ALL INVESTED FUNDS ARE STATED AND PAYABLE IN US DOLLARS

NOTES:

1. SEE "RISK FACTORS." POSSIBLE ACQUISITION OF INTERESTS BY AFFILIATES AND OTHERS.

2. JAY PEAK, INC. WILL RECEIVE THE ADMINISTRATION AND SYNDICATION FEE, AND BE RESPONSIBLE FOR THE COSTS OF THE CONCEPTUAL DESIGN, LEGAL, ACCOUNTING, ADMINISTRATION AND ALL OTHER COSTS RELATING TO THE PRESENTATION AND OFFERING COSTS OF THE LIMITED PARTNERSHIP INTERESTS.

3. INVESTORS FROM THE UNITED KINGDOM; JAY PEAK HOTEL SUITES PHASE II L.P IS A LIMITED PARTNERSHIP REGISTERED IN VERMONT USA, AND DOES NOT FALL WITHIN THE DEFINITION OF A "COLLECTIVE INVESTMENT SCHEME" FOR THE PURPOSES OF THE UK FINANCIAL SERVICES AND MARKETS ACT OF 2000 AS RECITED, AND AS AMENDED. THIS OFFERING HAS ADDITIONALLY BEEN PREPARED IN COMPLIANCE WITH SECTION 21 OF THE SAID ACT, AND CONTAINS ADDITIONAL RISK WARNINGS ARISING THEREFROM. SEE RISK FACTORS PAGE: 17

THE DATE OF THIS MEMORANDUM IS MARCH 31, 2008 AS AMENDED JUNE 20<sup>TH</sup> 2008 UPON COMPLETION OF STOCK TRANSFER OF JAY PEAK INC.

THIS MEMORANDUM # 100 HAS BEEN PROVIDED TO: Ian A. MacKechnie

## IMPORTANT INFORMATION

**REVIEW ALL INFORMATION** — A POTENTIAL INVESTOR SHOULD CAREFULLY REVIEW ALL THE INFORMATION AND EXHIBITS CONTAINED IN THIS MEMORANDUM INCLUDING THE LIMITED PARTNERSHIP AGREEMENT, THE FINANCIAL AND OPERATING DATA OF THE PARTNERSHIP ATTACHED HERETO, WHICH IS INCORPORATED HEREIN BY REFERENCE, AND THE SUBSCRIPTION AGREEMENT IN MAKING AN INVESTMENT DECISION. INVESTORS MUST RELY ON SUCH INVESTORS' OWN EXAMINATION OF THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. EACH PROSPECTIVE INVESTOR IS INVITED TO ASK QUESTIONS OF, AND UPON REQUEST MAY OBTAIN ADDITIONAL INFORMATION FROM THE GENERAL PARTNER CONCERNING THE LIMITED PARTNERSHIP, ITS CONTEMPLATED BUSINESS, THE TERMS AND CONDITIONS OF SUCH OFFERING AND ANY OTHER RELEVANT MATTERS TO THE EXTENT THE GENERAL PARTNER POSSESSES SUCH INFORMATION OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE.

**SOURCES OF INFORMATION** — THE INFORMATION CONTAINED HEREIN HAS BEEN OBTAINED FROM THE LIMITED PARTNERSHIP. NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IS MADE AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION AND NOTHING CONTAINED IN THIS MEMORANDUM IS OR SHALL BE RELIED ON AS A PROMISE OR REPRESENTATION AS TO THE PAST OR FUTURE. THIS MEMORANDUM IS PROVIDED SUBJECT TO AMENDMENT AND SUPPLEMENTATION BY THE GENERAL PARTNER IN ITS SOLE DISCRETION, AND THE TRANSACTION CONTEMPLATED HEREIN MAY BE MODIFIED OR WITHDRAWN AT ANY TIME. THE OBLIGATIONS OF THE PARTIES TO THIS TRANSACTION WILL BE SET FORTH AND GOVERNED BY THE DOCUMENTS REFERRED TO IN THIS MEMORANDUM.

**AUTHORIZED STATEMENTS** — THIS OFFERING MEMORANDUM CONTAINS ALL OF THE REPRESENTATIONS BY THE PARTNERSHIP CONCERNING THIS OFFERING, AND NO PERSON SHALL MAKE DIFFERENT OR BROADER STATEMENTS THAN THOSE CONTAINED HEREIN. INVESTORS ARE CAUTIONED NOT TO RELY UPON ANY INFORMATION NOT EXPRESSLY SET FORTH IN THIS MEMORANDUM.

**MEMORANDUM NOT LEGAL ADVICE** — PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS MEMORANDUM OR ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM THE PARTNERSHIP AS LEGAL OR TAX ADVICE. EACH INVESTOR MUST RELY SOLELY UPON HIS OR HER OWN REPRESENTATIVES (INCLUDING HIS OR HER LEGAL COUNSEL, ACCOUNTANT AND OTHER PERSONAL ADVISORS) AS TO LEGAL, TAX, IMMIGRATION, BUSINESS AND RELATED MATTERS CONCERNING A PROSPECTIVE INVESTMENT IN THE PARTNERSHIP.

**PRIVATE MEMORANDUM** — THIS MEMORANDUM HAS BEEN PREPARED SOLELY FOR THE INFORMATION OF PERSONS AND ENTITIES INTERESTED IN THE PRIVATE PLACEMENT OF THE INTERESTS OFFERED HEREBY AND MAY NOT BE REPRODUCED OR USED FOR ANY OTHER PURPOSE. ANY REPRODUCTION OR DISTRIBUTION OF THIS MEMORANDUM, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT OF THE PARTNERSHIP IS PROHIBITED. BY ACCEPTING THIS MEMORANDUM, PROSPECTIVE INVESTORS AGREE THAT THEY WILL NOT DISCLOSE ITS CONTENTS TO ANYONE OTHER THAN THEIR PROFESSIONAL ADVISERS, OR REPRODUCE IT, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT OF THE PARTNERSHIP.

**DETERMINATION OF OFFERING PRICE** — THE PRICE OF THE MINIMUM INTEREST WAS DETERMINED BY THE PARTNERSHIP TO ASSIST INVESTORS WHO WISH TO MEET THE REQUIREMENTS UNDER THE ACT.

**BEST EFFORTS OFFERING** — ALL INTERESTS ARE OFFERED BY THE PARTNERSHIP ON A "BEST EFFORTS" NON-MINIMUM BASIS. THERE IS NO ASSURANCE THAT ALL OR ANY OF THE DESIRED CAPITAL WILL BE RAISED THROUGH THE OFFERING. THE OFFERING HAS NO MINIMUM AMOUNT AND THE PARTNERSHIP WILL UTILIZE PROCEEDS AS THEY ARE RECEIVED. SEE PAGE 15 COMPLETION OF PROJECT.

**LIQUIDITY AND CAPITAL RESOURCES** — THE PARTNERSHIP'S LIQUIDITY NEEDS TO DATE HAVE BEEN SATISFIED BY SUPPORT FROM RELATED PARTIES (SEE "TRANSACTIONS WITH RELATED PARTIES - FINANCIAL DATA"). MANAGEMENT BELIEVES THAT THE MAXIMUM PROCEEDS OF THIS OFFERING WILL GENERATE SUFFICIENT CAPITAL TO CONDUCT THE BUSINESS OF THE PARTNERSHIP UNTIL THE PLANNED OPENING OF THE HOTEL AND ANCILLARY PROJECTS.

**MISCELLANEOUS** — THE DESCRIPTION IN THIS MEMORANDUM OF ANY AGREEMENT, DOCUMENT, STATUTE, RULE, REGULATION, OR PROPOSED LEGISLATION IS NOT DESIGNED TO BE COMPLETE AND IS, THEREFORE,



QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE RESPECTIVE AGREEMENT, DOCUMENT, STATUTE, RULE, REGULATION OR PROPOSED LEGISLATION.

**FORWARD-LOOKING STATEMENTS AND PROJECTIONS** — THIS OFFERING MEMORANDUM CONTAINS FORWARD-LOOKING STATEMENTS AND PROJECTIONS THAT MAY ADDRESS, AMONG OTHER THINGS, HOTEL AND SKI RESORT DEVELOPMENT STRATEGY, PROJECTED CONSTRUCTION TIMES, EXPANSION STRATEGY, DEVELOPMENT OF SERVICES, USE OF PROCEEDS, PROJECTED REVENUE AND CAPITAL EXPENDITURES, OPERATING COSTS, LIQUIDITY, DEVELOPMENT OF ADDITIONAL REVENUE SOURCES, DEVELOPMENT AND MAINTENANCE OF PROFITABLE MARKETING AND MANAGEMENT AND MAINTENANCE ALLIANCES, ABILITY TO DEVELOP "RESORT" IDENTIFICATION, AND NATIONAL AND INTERNATIONAL EXPANSION. THESE STATEMENTS MAY BE FOUND IN THE SECTIONS OF THIS PRIVATE PLACEMENT MEMORANDUM ENTITLED "SUMMARY OF OFFERING," "RISK FACTORS," "USE OF PROCEEDS," "THE PARTNERSHIP'S BUSINESS PLAN" AND IN THIS PRIVATE PLACEMENT MEMORANDUM GENERALLY. ACTUAL RESULTS COULD DIFFER MATERIALLY FROM THOSE ANTICIPATED IN THESE FORWARD-LOOKING STATEMENTS AND PROJECTIONS AS A RESULT OF VARIOUS FACTORS, INCLUDING ALL THE RISKS DISCUSSED IN "RISK FACTORS" AND ELSEWHERE IN THIS PRIVATE PLACEMENT MEMORANDUM.

**SPECULATIVE OFFERING AND RISK** — THE INTERESTS OFFERED HEREBY SHOULD BE CONSIDERED ONLY BY PERSONS WHO CAN AFFORD TO SUSTAIN A LOSS OF THEIR ENTIRE INVESTMENT. INVESTORS WILL BE REQUIRED TO REPRESENT THAT THEY ARE FAMILIAR WITH AND UNDERSTAND THE TERMS OF THIS OFFERING, AND THAT THEY OR THEIR PURCHASER REPRESENTATIVES HAVE SUCH KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT THEY ARE CAPABLE OF EVALUATING THE MERITS AND RISKS OF THIS INVESTMENT. INVESTORS SHOULD BE AWARE THAT UNLESS THE LIMITED PARTNERSHIP IS ABLE TO COMPLETE AN EVENTUAL SALE OF THE HOTEL AS CONDOMINIUM INTERESTS, FRACTIONAL SHARES OR AS AN ONGOING ENTITY, OR THE PARTNERSHIP IS ABLE TO BE SOLD FOR CASH OR MERGED WITH ANOTHER ENTITY THAT THEIR INVESTMENT IN THE LIMITED PARTNERSHIP MAY BE ILLIQUID INDEFINITELY.

**RESTRICTIONS ON TRANSFERS** — NO INTERESTS MAY BE RESOLD OR OTHERWISE DISPOSED OF BY AN INVESTOR UNLESS, IN THE OPINION OF COUNSEL TO THE PARTNERSHIP, REGISTRATION UNDER THE APPLICABLE FEDERAL OR STATE SECURITIES LAWS IS NOT REQUIRED OR COMPLIANCE IS MADE WITH SUCH REGISTRATION REQUIREMENTS. RESTRICTIONS MAY ALSO ARISE FROM THE REQUIREMENTS OF AND COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS AND THE LIMITED PARTNERSHIP AGREEMENT (SEE LIMITED PARTNERSHIP AGREEMENT).

**LIMITS ON DISCLOSURE** — THE OFFERING MATERIALS ARE SUBMITTED IN CONNECTION WITH THE PRIVATE OFFERING OF THE INTERESTS AND DO NOT CONSTITUTE AN OFFER OR SOLICITATION BY ANYONE IN ANY JURISDICTION IN WHICH SUCH AN OFFER OR SOLICITATION IS NOT AUTHORIZED. ANY REPRODUCTION OR DISTRIBUTION OF THE OFFERING MATERIALS IN WHOLE OR IN PART, OR THE DIVULGENCE OF ANY OF THEIR CONTENTS, WITHOUT THE PRIOR WRITTEN CONSENT OF THE PARTNERSHIP IS PROHIBITED. ANY PERSON ACTING CONTRARY TO THE FOREGOING RESTRICTIONS MAY PLACE HIMSELF AND THE PARTNERSHIP IN VIOLATION OF FEDERAL OR STATE SECURITIES LAWS.

**VOIDABILITY OF SALES** — THE INTERESTS OFFERED HEREIN WILL BE SOLD TO AND ACQUIRED BY A PURCHASER IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER FEDERAL AND CERTAIN STATES SECURITIES LAWS AND REGULATIONS, AND MAY NOT BE OFFERED FOR SALE OR RESOLD EXCEPT IN A TRANSACTION EXEMPT FROM SAID SECURITIES LAWS AND REGULATIONS, OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT HEREUNDER. SALES MADE PURSUANT TO EXEMPTIONS FROM FEDERAL AND STATE SECURITIES LAWS ARE VOIDABLE BY EACH SUBSCRIBER UPON NOTICE TO THE GENERAL PARTNER GIVEN WITHIN THREE DAYS FOLLOWING THE LATER OF RECEIPT BY THE SUBSCRIBER OF THIS MEMORANDUM OR THE RECEIPT AND ACCEPTANCE BY THE GENERAL PARTNER OF THE SUBSCRIBER'S EXECUTED SUBSCRIPTION AGREEMENT. THE LIMITED PARTNERSHIP WILL OFFER SUCH RESCISSION RIGHT TO EACH SUBSCRIBER, IRRESPECTIVE OF THE SUBSCRIBER'S STATE OR COUNTRY OF RESIDENCY, NOTWITHSTANDING THE LACK OF SUCH REQUIREMENTS UNDER FEDERAL OR STATE SECURITIES LAWS.

**OFFERING BEING MADE PURSUANT TO CERTAIN STATES SECURITIES LAW REGISTRATION EXCEPTIONS** —ANY AND ALL NOTICES UNDER THIS SECTION SHOULD BE SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE LIMITED PARTNERSHIP IN CARE OF WILLIAM STENGER, 4850 VT ROUTE 24 JAY, VERMONT 05859.

RESTRICTIVE INFORMATION:

INTERESTS WILL BE OFFERED WITHOUT REGISTRATION UNDER THE SECURITIES ACT OR STATE SECURITIES ACTS, AS SUMMARIZED BELOW, AND MORE SPECIFICALLY DETAILED HEREUNDER:

WITHIN THE UNITED STATES, IN RELIANCE UPON RULE 506 OF REGULATION "D" PROMULGATED BY THE SEC, ONLY TO PERSONS WHO ARE "ACCREDITED INVESTORS" WITHIN THE MEANING OF RULE 501 PROMULGATED BY THE SEC; AND,

OUTSIDE THE UNITED STATES, IN RELIANCE UPON REGULATION "S" PROMULGATED BY THE SEC ONLY TO PERSONS WHO ARE NOT "U.S. PERSONS" WITHIN THE MEANING OF SUCH REGULATIONS.

FOR THE PURPOSES OF THIS MEMORANDUM, "U.S. PERSON" MEANS ANY NATURAL PERSON RESIDENT IN THE UNITED STATES.

THE INCLUSION OF INFORMATION FOR EACH STATE IN THIS MEMORANDUM IS NOT INTENDED TO IMPLY THAT THE INTERESTS COVERED BY THIS MEMORANDUM ARE TO BE OFFERED FOR SALE IN EVERY STATE, BUT IS MERELY A PRECAUTION IN THE EVENT THIS MEMORANDUM MAY BE TRANSMITTED INTO ANY STATE OTHER THAN BY THE ISSUER.

FOR RESIDENTS IN ALL STATES:

THE SECURITIES OFFERED HEREBY HAVE NEITHER BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 SECURITIES ACT"), NOR PURSUANT TO THE SECURITIES LAWS OF ANY STATE, AND ARE THEREFORE BEING OFFERED AND WILL BE SOLD TO AND ACQUIRED BY PURCHASERS IN TRANSACTIONS WHICH THE PARTNERSHIP BELIEVES TO BE EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE 1933 SECURITIES ACT PURSUANT, TO §§3(B) AND 4(2) OR OTHER APPLICABLE SECTION(S) THEREOF, AND OF THE SECURITIES LAWS OF THE STATES IN WHICH THE INTERESTS MAY BE OFFERED FOR SALE (PURSUANT TO THE EXEMPTIONS IDENTIFIED BELOW). ONCE PURCHASED BY A SUBSCRIBER, THESE SECURITIES MAY NOT BE RE-OFFERED FOR SALE OR RE-SOLD OTHER THAN BY AN EFFECTIVE REGISTRATION STATEMENT OR IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE APPLICABLE LAW. THE SECURITIES HAVE NEITHER BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES REGULATORY AUTHORITY, NOR HAS THAT COMMISSION OR ANY SUCH AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

FOR VERMONT RESIDENTS ONLY:

THE SALE OF LIMITED PARTNERSHIP INTERESTS OFFERED AND DESCRIBED IN THIS MEMORANDUM WILL ONLY BE SOLD TO AND ACQUIRED BY INVESTORS IN A TRANSACTION EXEMPT FROM REGISTRATION OF SECURITIES WITH THE VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES AND HEALTH CARE ADMINISTRATION UNDER SECTION 5202(13)(C) OR OTHER APPLICABLE SECTION(S) OF THE VERMONT UNIFORM SECURITIES ACT (2002) (THE "VERMONT ACT"). AS SUCH, THE LIMITED PARTNERSHIP INTERESTS HAVE NOT BEEN REGISTERED AS SECURITIES UNDER THE VERMONT ACT. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

FOR CALIFORNIA RESIDENTS ONLY:

THE SALE OF THE INTERESTS DESCRIBED IN THIS MEMORANDUM HAVE NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH INTERESTS OR THE PAYMENT OR THE RECEIPT OF CONSIDERATION THEREFORE PRIOR TO SUCH QUALIFICATION IS UNLAWFUL, UNLESS THE SALE THEREOF IS EXEMPT UNDER APPLICABLE LAW. THE PARTNERSHIP IS RELYING ON THE EXEMPTION FROM SUCH QUALIFICATION PROVIDED BY SECTION 25102(F) OR OTHER APPLICABLE SECTION(S) OF THE CALIFORNIA CORPORATIONS CODE.

FOR FLORIDA RESIDENTS ONLY:

THE INTERESTS OFFERED HEREIN WILL BE SOLD TO AND ACQUIRED BY INVESTORS IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 517.061 OR OTHER APPLICABLE SECTION(S) OF THE FLORIDA SECURITIES ACT (THE "FLORIDA ACT"). THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE FLORIDA ACT. IN ADDITION, IF SALES ARE MADE TO FIVE OR MORE PERSONS IN FLORIDA, ALL PURCHASERS WHO ARE RESIDENTS OF FLORIDA HAVE THE PRIVILEGE OF VOIDING A PURCHASE OF INTERESTS WITHIN THREE DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY THE PURCHASER TO THE ISSUER, AN AGENT OF THE ISSUER, OR AN

ESCROW AGENT, OR WITHIN THREE DAYS AFTER THE AVAILABILITY OF THIS PRIVILEGE IS COMMUNICATED TO THE PURCHASER, WHICHEVER OCCURS LATER. THIS SALE IS BEING MADE IN FLORIDA.

FOR PERSONS RESIDENT OUTSIDE THE UNITED STATES OF AMERICA ONLY:

THE INTERESTS ARE BEING OFFERED IN ACCORDANCE WITH REGULATION "S" PROMULGATED BY THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE SECURITIES ACT OF 1933. THIS OFFERING MEMORANDUM DOES NOT CONSTITUTE AN OFFER OR SOLICITATION IN THE UNITED STATES OF AMERICA OR ANY JURISDICTION IN WHICH SUCH OFFER OR SOLICITATION IS NOT PERMITTED UNDER APPLICABLE LAW OR TO ANY U.S. PERSON OR INDIVIDUAL WHO DOES NOT POSSESS THE QUALIFICATIONS DESCRIBED IN THIS MEMORANDUM.

FOR UK CITIZENS RESIDENT IN THE UNITED KINGDOM:

JAY PEAK HOTEL SUITES PHASE II L.P. IS A LIMITED PARTNERSHIP ORGANIZED IN VERMONT, USA, AND DOES NOT FALL WITHIN THE DEFINITION OF A "COLLECTIVE INVESTMENT SCHEME" FOR THE PURPOSES OF THE UK FINANCIAL SERVICES AND MARKETS ACT OF 2000 AS RECITED, AND AS AMENDED. THIS OFFERING HAS ADDITIONALLY BEEN PREPARED IN COMPLIANCE WITH SECTION 21 OF THE SAID ACT, AND CONTAINS ADDITIONAL RISK WARNINGS ARISING THEREFROM, AND DIFFERS TO RISK WARNINGS RELEVANT TO INVESTORS FOR THE SAME INVESTMENT FROM OUTSIDE THE UNITED KINGDOM.

INTERESTS WILL NOT BE OFFERED TO ANY PERSON EXCEPT AS SET FORTH ABOVE. ANY PERSON WISHING TO BUY AN INTEREST WILL BE REQUIRED TO DEMONSTRATE THAT HE OR SHE IS AN ELIGIBLE INVESTOR IN ACCORDANCE WITH THE FOREGOING. THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL TO, OR A SOLICITATION OF AN OFFER TO BUY FROM, ANY PERSON IN ANY JURISDICTION TO WHOM SUCH AN OFFER OR SOLICITATION WOULD BE UNLAWFUL.

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## INVESTOR SUITABILITY STANDARDS

A PURCHASE OF INTERESTS IN THIS OFFERING INVOLVES A HIGH DEGREE OF RISK AND IS NOT A SUITABLE INVESTMENT FOR ALL POTENTIAL INVESTORS. SEE "RISK FACTORS." ACCORDINGLY, THE PARTNERSHIP WILL OFFER AND SELL INTERESTS ONLY TO INVESTORS WHO ARE "ACCREDITED INVESTORS" AS THAT TERM IS DEFINED IN REGULATION D OR REGULATION S AS PROMULGATED UNDER THE 1933 SECURITIES ACT. ANY PERSON WISHING TO BUY AN INTEREST WILL BE REQUIRED TO DEMONSTRATE THAT HE OR SHE IS AN ELIGIBLE INVESTOR IN ACCORDANCE WITH THE FOREGOING. THE PARTNERSHIP HAS THE UNCONDITIONAL RIGHT TO REJECT ANY SUBSCRIPTION.

THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL TO, OR A SOLICITATION OF AN OFFER TO BUY FROM, ANY PERSON IN ANY JURISDICTION TO WHOM SUCH AN OFFER OR SOLICITATION WOULD BE UNLAWFUL. IN ADDITION TO RESTRICTIONS ON TRANSFER IMPOSED BY THE PARTNERSHIP, AN INVESTOR SEEKING TO TRANSFER HIS INTERESTS SUBSEQUENT TO HIS INITIAL INVESTMENT WILL BE SUBJECT TO THE PROVISIONS OF THE FEDERAL AND STATE SECURITIES LAWS AND THE TRANSFER RESTRICTIONS WHICH MAY BE IMPOSED PURSUANT TO SAID LAWS.

THE OFFER AND SALE OF INTERESTS ARE EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF THE 1933 SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO EXEMPTIONS THEREIN. INVESTMENT IN THE INTERESTS IS SUITABLE ONLY FOR THOSE WHO HAVE ADEQUATE MEANS OF PROVIDING FOR THEIR CURRENT NEEDS AND PERSONAL CONTINGENCIES AND HAVE NO NEED FOR LIQUIDITY IN AN INVESTMENT OF THIS TYPE. PRIOR TO THE PURCHASE OF THE INTERESTS, EACH PROSPECTIVE PURCHASER WILL BE REQUIRED TO REPRESENT THAT HE MEETS EACH OF THE FOLLOWING REQUIREMENTS: (A) HE HAS THE REQUISITE KNOWLEDGE OR HAS RELIED UPON THE ADVICE OF HIS OWN PROFESSIONAL ADVISOR(S) WITH REGARD TO THE TAX AND OTHER CONSIDERATIONS INVOLVED IN MAKING SUCH AN INVESTMENT AND (B) HE IS ACQUIRING THE INTERESTS FOR INVESTMENT AND NOT WITH A VIEW TO RESALE OR DISTRIBUTION THEREOF.

PRIOR TO A PURCHASE OF INTERESTS, EACH PROSPECTIVE PURCHASER WILL BE REQUIRED TO REPRESENT THAT HE IS AN "ACCREDITED INVESTOR" AS DEFINED IN REGULATION D OR REGULATION S. AMONG OTHER CATEGORIES, AN "ACCREDITED INVESTOR" IS AN INVESTOR WHO, AT THE TIME OF PURCHASE OF THE INTERESTS, MEETS ONE OF THE FOLLOWING REQUIREMENTS:

- (I) ANY NATURAL PERSON WHOSE INDIVIDUAL NET WORTH, OR JOINT NET WORTH WITH THAT PERSON'S SPOUSE, AT THE TIME OF THE PURCHASE EXCEEDS \$ 1,000,000;
- (II) ANY NATURAL PERSON WHO HAD AN INDIVIDUAL INCOME IN EXCESS OF \$200,000 EACH OF THE TWO MOST RECENT YEARS OR JOINT INCOME WITH THAT PERSON'S SPOUSE IN EXCESS OF \$300,000 IN EACH OF THE TWO MOST RECENT YEARS AND WHO REASONABLY EXPECTS TO REACH THE SAME INCOME LEVEL IN THE CURRENT YEAR; OR
- (III) ANY ENTITY IN WHICH ALL OF THE EQUITY OWNERS ARE ACCREDITED INVESTORS.

IF, IN THE OPINION OF THE LIMITED PARTNERSHIP, A PROSPECTIVE PURCHASER LACKS THE KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS SO THAT HE IS NOT CAPABLE OF EVALUATING THE MERITS AND RISKS INVOLVED IN THE PURCHASE AND OWNERSHIP OF THE LIMITED PARTNERSHIP INTEREST, THE LIMITED PARTNERSHIP MAY REQUIRE THE PROSPECTIVE PURCHASER TO USE THE SERVICES OF A PURCHASER REPRESENTATIVE TO SERVE THE INVESTOR IN EVALUATING THE MERITS AND RISKS OF THE PROSPECTIVE INVESTMENT. IF SUCH A PURCHASER REPRESENTATIVE IS REQUIRED AND USED, THE LIMITED PARTNERSHIP WILL PROVIDE THE PROSPECTIVE INVESTOR THE APPROPRIATE FORMS FOR BOTH THE PROSPECTIVE INVESTOR AND PURCHASER REPRESENTATIVE TO SIGN AND RETURN TO THE LIMITED PARTNERSHIP.

PRIOR TO PURCHASE, AN INVESTOR QUESTIONNAIRE (EXHIBIT B) AND A SUBSCRIPTION AGREEMENT (EXHIBIT A) MUST BE SIGNED AND DELIVERED BY A PROSPECTIVE PURCHASER TO THE PARTNERSHIP.

IF THE PARTNERSHIP IS INCORRECT IN ITS ASSUMPTION AS TO THE CIRCUMSTANCES OF A PARTICULAR PROSPECTIVE INVESTOR, THEN THE DELIVERY OF THIS MEMORANDUM TO SUCH PROSPECTIVE INVESTOR

SHALL NOT BE DEEMED TO BE AN OFFER AND THIS MEMORANDUM SHALL BE RETURNED TO THE PARTNERSHIP IMMEDIATELY.

THE SUITABILITY STANDARDS DEFINED ABOVE REPRESENT SUITABILITY STANDARDS FOR PROSPECTIVE INVESTORS. EACH PROSPECTIVE INVESTOR SHOULD DETERMINE WHETHER AN INVESTMENT IN THE PARTNERSHIP IS APPROPRIATE IN VIEW OF HIS OR HER PARTICULAR CIRCUMSTANCES.

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## IMMIGRATION

THE IMMIGRATION INFORMATION CITED IN THIS OFFERING MEMORANDUM IS NOT IMMIGRATION ADVICE TO THE FOREIGN INVESTOR. EACH FOREIGN INVESTOR SHOULD CONSULT HIS OR HER OWN INDEPENDANT IMMIGRATION COUNSEL REGARDING IMPLICATIONS AND BENFITS OR OTHERWISE OF INVESTING IN THE PARTNERSHIP.

## OVERVIEW

THE EB-5, FIFTH EMPLOYMENT-BASED VISA PREFERENCE, IS INTENDED TO ENCOURAGE THE FLOW OF CAPITAL INTO THE U.S. ECONOMY AND TO PROMOTE EMPLOYMENT OF U.S. WORKERS. TO ACCOMPLISH THESE GOALS AND SO THAT FOREIGN INVESTORS MAY OBTAIN IMMIGRATION BENEFITS FOR HAVING MADE AN INVESTMENT, THE PROGRAM MANDATES THE MINIMUM CAPITAL THAT FOREIGN INVESTORS MUST CONTRIBUTE AND IT MANDATES THAT 10 FULL-TIME JOBS MUST BE CREATED ON ACCOUNT OF EACH INVESTMENT. IN ADDITION TO THE RETURN THAT INVESTORS HOPE TO ACHIEVE ON THEIR INVESTMENT, FOREIGN INVESTORS AND THEIR QUALIFYING FAMILY MEMBERS ARE OFFERED THE PROSPECT, BUT NOT THE GUARANTEE, OF LAWFUL PERMANENT RESIDENCE IN THE UNITED STATES.

THE JAY PEAK PROJECT HAS BEEN STRUCTURED SO THAT INVESTORS MAY MEET THE REQUIREMENTS OF THE EB-5 PROGRAM OF THE ACT AND QUALIFY UNDER THIS PROJECT (THE "PROJECT") TO BECOME ELIGIBLE FOR ADMISSION TO THE UNITED STATES OF AMERICA AS LAWFUL PERMANENT RESIDENTS WITH THEIR SPOUSES AND UNMARRIED, MINOR CHILDREN.

THE PROJECT HAS BEEN DESIGNED TO QUALIFY UNDER PROVISIONS IN THE LAW THAT PERMIT A REDUCED INVESTMENT AND PERMIT A BROADER ANALYSIS OF JOBS CREATED THAN WOULD OTHERWISE BE PERMITTED. WITH RESPECT TO THE MINIMUM INVESTMENT REQUIRED, THE PROJECT UTILIZES THE PROVISIONS OF THE ACT CONCERNING A TARGETED EMPLOYMENT AREA. TO MEET EMPLOYMENT CREATION REQUIREMENTS, THE PROJECT RELIES UPON THE FACT THAT JAY PEAK IS WITHIN A REGIONAL CENTER AUTHORIZED BY THE ACT CREATED UNDER A PILOT PROGRAM (*SEE IMMIGRATION RISK FACTORS, PAGE 30*)

## FOR EB-5 INVESTORS

FOREIGN INVESTORS ARE ALSO SPECIFICALLY DIRECTED TO CERTAIN IMPORTANT MATTERS LISTED BOTH IN THE IMMIGRATION RISK FACTORS PAGE 30, AND HEREUNDER:

LEGAL COUNSEL: THE INVESTOR SHALL HIRE INDEPENDENT COUNSEL FOR IMMIGRATION PROCESSING AND OTHER LEGAL MATTERS. THE INVESTOR SHALL BE RESPONSIBLE FOR PAYMENT OF ALL LEGAL FEES AND COSTS INCLUDING UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES ("USCIS" OR "CIS") APPLICATION FEES.

FILING THE IMMIGRANT PETITIONS: JAY PEAK HOTEL SUITES PHASE II L.P. AND JAY PEAK, INC. SHALL AT NO COST TO INVESTORS, USE THEIR REASONABLE BEST EFFORTS TO ASSIST THE FOREIGN INVESTORS' LEGAL COUNSEL WITH THE FILING OF INVESTORS' I-526 AND I-829 PETITIONS, AND VERIFYING REQUIRED DIRECT AND INDIRECT EMPLOYMENT, UNTIL REMOVAL OF SUCH INVESTORS' CONDITIONAL PERMANENT RESIDENCY.

IN THE EVENT AN INVESTOR'S I-526 PETITION IS DENIED AT ANY TIME, FOR REASONS OTHER THAN FRAUD OR MATERIAL MISREPRESENTATION, THE INVESTOR'S RIGHTS ARE LIMITED SOLELY TO THE RETURN OF THE INVESTOR'S \$500,000 CAPITAL CONTRIBUTION (BUT NOT THE \$50,000 ADMINISTRATION FEE) WITHIN NINETY (90) DAYS OF WRITTEN REQUEST THEREFOR TO THE GENERAL PARTNER.

IF CIS DENIES AN INVESTOR'S I-526 PETITION ON THE BASIS OF FRAUD OR MATERIAL MISREPRESENTATION IN THE INVESTOR'S I-526 PETITION OR ITS SUPPORTING DOCUMENTS PROVIDED BY THE INVESTOR, THE LIMITED PARTNERSHIP WILL BE ENTITLED TO RETAIN PAYMENT OF ALL FUNDS, INCLUDING THE INVESTOR'S \$500,000 CAPITAL CONTRIBUTION, INTEREST PAID ON ACCOUNT OF THE INVESTMENT AND ADMINISTRATION FEES.

CONTESTED THE CHANGE IN RULES AFTER THEIR INVESTMENTS WERE MADE. THEIR POSITION WAS SUPPORTED IN LITIGATION THAT RESULTED IN INS BEING ORDERED TO RECONSIDER THEIR APPLICATIONS TO REMOVE CONDITIONS BY APPLYING THE ORIGINAL RULES.

THERE CANNOT BE ANY ASSURANCE THAT CIS WILL NOT CHANGE THE REQUIREMENTS FOR REMOVAL OF CONDITIONS AFTER INVESTORS ARE GRANTED CLPR STATUS THROUGH INVESTMENT IN THE PROJECT. THERE CANNOT BE ANY ASSURANCE THAT AN INVESTOR WILL BE ABLE TO DEMONSTRATE TO THE SATISFACTION OF CIS THAT THE PROJECT IS OPERATING WITHIN ITS BUSINESS PLAN, THAT IT HAS CREATED THE REQUISITE JOBS AT THE TIME REQUIRED BY CIS OR THAT ANY OTHER REQUIREMENTS FOR THE REMOVAL OF CONDITIONS HAVE BEEN MET.

## **IMMIGRATION RISK FACTORS**

A PURCHASER SHOULD CONSULT WITH LEGAL COUNSEL FAMILIAR WITH UNITED STATES IMMIGRATION LAWS AND PRACTICE. PURCHASE OF A LIMITED PARTNERSHIP INTEREST DOES NOT GUARANTEE LAWFUL PERMANENT RESIDENCE IN THE UNITED STATES.

THE LIMITED PARTNERSHIP INTERESTS DESCRIBED IN THIS OFFERING MEMORANDUM INVOLVE A SIGNIFICANT DEGREE OF RISK. AMONG THE IMMIGRATION RISK FACTORS THAT A PROSPECTIVE PURCHASER SHOULD CONSIDER CAREFULLY ARE THE FOLLOWING; THIS LIST IS NOT EXHAUSTIVE:

### **GENERAL**

WHILE BEST EFFORTS HAVE BEEN MADE TO STRUCTURE THIS OFFERING SO THAT INVESTORS MAY MEET EB-5, FIFTH EMPLOYMENT-BASED VISA PREFERENCE REQUIREMENTS UNDER THE ACT AND QUALIFY AS "ALIEN ENTREPRENEURS", A PRELIMINARY STEP TO BECOMING ELIGIBLE FOR ADMISSION TO THE UNITED STATES OF AMERICA WITH THEIR SPOUSE AND UNMARRIED MINOR CHILDREN AS LAWFUL PERMANENT RESIDENTS, NO REPRESENTATIONS CAN BE MADE AND NO GUARANTEES CAN BE GIVEN WITH RESPECT TO THE ABILITY OF THIS INVESTMENT TO GUARANTEE OR OTHERWISE ASSURE THAT AN INVESTOR'S APPLICATION TO BE APPROVED AS AN "ALIEN ENTREPRENEUR" WILL BE GRANTED BY CIS OR, IF IT IS, THAT INVESTORS WITH THEIR SPOUSE AND SUCH CHILDREN WILL OBTAIN CONDITIONAL OR UNCONDITIONAL LAWFUL PERMANENT RESIDENT STATUS.

### **APPROVAL OF INVESTMENTS IN THE PROJECT**

THERE IS NO PROCEDURE IN THE ACT OR ITS ENABLING REGULATIONS TO PRE-QUALIFY AN INVESTMENT FOR THE EB-5, ALIEN ENTREPRENEUR PROGRAM. AN APPLICATION ON FORM I-526 MUST BE FILED WITH CIS BY THE INVESTOR TO DETERMINE THE SUITABILITY OF THE INVESTMENT OFFERED HEREIN FOR IMMIGRATION PURPOSES UNDER 8 U.S.C. § 1153 (B)(5)(A) - (D); INA § 203 (B)(5)(A) - (D). CIS MAY DENY SUCH AN APPLICATION.

### **PROCESSING TIMES**

CIS AND DOS PROCESSING TIMES FOR THE I-526 AND THE ADJUSTMENT OF STATUS OR CONSULAR PROCESSING CASES ARE NOT PREDICTABLE, NOTWITHSTANDING PUBLISHED PROCESSING TIMES BY THESE AGENCIES. DELAYS IN PROCESSING TIMES ARE EXPECTED TO INCREASE AS THE USE OF THE EB-5 PROGRAM INCREASES. INVESTORS SHOULD NOT MAKE ANY CHANGES IN THEIR LIFESTYLES BEFORE RECEIVING CLPR FROM THE EB-5 PROGRAM.

### **GOVERNMENT FILING FEES**

PERIODICALLY, BUT IRREGULARLY, CIS AND DOS CHANGE FILING FEES FOR THEIR RESPECTIVE APPLICATIONS AND PETITIONS. SUCH CHANGES MAY INCREASE THE IMMIGRATION FILING COSTS TO AN INVESTOR WHO HAS

SUCH TIME AS THE ALIEN'S NON-IMMIGRANT STATUS EXPIRES, THE ALIEN IS EXPECTED TO DEPART THE U.S. IF AT THE TIME OF THE DENIAL OF AOS, THE ALIEN'S NON-IMMIGRANT STATUS WAS EXPIRED, THE ALIEN IS EXPECTED TO DEPART THE U.S. FAILURE TO DEPART TIMELY IS A VIOLATION OF U.S. IMMIGRATION LAW AND REGULATION WHICH MAY EFFECT THE ABILITY OF THE ALIEN TO QUALIFY FOR FUTURE IMMIGRATION BENEFITS.

IF AN ALIEN INVESTOR IS ADMITTED TO THE U.S. IN A NON-IMMIGRANT STATUS (PENDING AOS), THE SPOUSE AND CHILDREN OF THE ALIEN INVESTOR ARE FREQUENTLY ADMITTED FOR A TIME COINCIDENT WITH THE AUTHORIZATION OF THE INVESTOR TO REMAIN IN THE U.S. IF AOS IS NOT GRANTED TO THE ALIEN INVESTOR AND THE INVESTOR'S NON-IMMIGRANT STATUS EXPIRES, THE STATUS OF THE SPOUSE AND CHILDREN WILL BE DEEMED TO HAVE EXPIRED AT THE SAME TIME. THEY, TOO, WILL BE EXPECTED TO DEPART THE U.S. AT THAT TIME.

AOS APPLICANTS SHOULD NOT MAKE ANY PERMANENT CONNECTIONS TO THE UNITED STATES OR CHANGE ANY PERMANENT LIVING, EMPLOYMENT, SCHOOLING OR OTHER LIFESTYLE ARRANGEMENTS IN THEIR COUNTRY OF RESIDENCE BEFORE THEY ARE ISSUED AOS BASED UPON AN APPROVED I-526 PETITION.

## **REMOVAL OF CONDITIONS**

APPROVAL OF AN AOS APPLICATION OR THE GRANT OF AN EB-5 VISA FOLLOWED BY ENTRY INTO THE U.S. IN EB-5 STATUS MEANS THAT THE INVESTOR AND THE SPOUSE AND QUALIFIED CHILDREN OF THE INVESTOR HAVE BEEN GRANTED CONDITIONAL LAWFUL PERMANENT RESIDENCE (CLPR) FOR TWO YEARS. THE "CONDITIONS" MUST BE REMOVED SO THAT THE ALIENS MAY RESIDE IN THE U.S. INDEFINITELY. FAILURE TO REMOVE THE CONDITIONS RESULTS IN THE TERMINATION OF CLPR STATUS AND WILL LIKELY RESULT IN THE COMMENCEMENT OF REMOVAL PROCEEDINGS.

REMOVAL OF CONDITIONS IS SOUGHT BY THE FILING OF A PETITION IN THE 90 DAY PERIOD IMMEDIATELY PRECEDING THE SECOND ANNIVERSARY OF THE GRANT OF CLPR STATUS. IN SUPPORT OF THE PETITION, THE ALIEN INVESTOR MUST DEMONSTRATE FULL INVESTMENT IN THE ENTERPRISE AND COMPLIANCE WITH THE REQUIREMENT THAT 10 JOBS HAVE BEEN CREATED AS A RESULT OF THE INVESTMENT. THE INVESTOR MUST ALSO DEMONSTRATE MAINTENANCE OF THE INVESTMENT CONTINUOUSLY SINCE BECOMING A CLPR. THE GENERAL PARTNER WILL PROVIDE DOCUMENTATION UPON REQUEST BY THE INVESTOR AS REASONABLY NECESSARY AND AVAILABLE IN SUPPORT OF INVESTOR'S APPLICATION FOR REMOVAL OF CONDITIONS

THE TEXAS SERVICE CENTER CURRENTLY HAS JURISDICTION TO DECIDE A PETITION TO REMOVE CONDITIONS. IT IS AUTHORIZED TO APPROVE A PETITION, SEEK ADDITIONAL WRITTEN INFORMATION BEFORE DECIDING THE PETITION, REFER THE PETITION TO A LOCAL OFFICE WHERE INFORMATION WILL BE ELICITED IN AN INTERVIEW, OR, IT MAY DENY THE PETITION. IF THE PETITION IS REFERRED FOR AN INTERVIEW, THE LOCAL OFFICE OF CIS WILL DECIDE THE PETITION AFTER THE INTERVIEW.

DURING THE PENDENCY OF THE PETITION, ALIENS ADMITTED IN CLPR STATUS REMAIN IN VALID STATUS EVEN IF THE PETITION IS NOT DECIDED BEFORE THE EXPIRY OF THE TWO YEAR PERIOD OF ADMISSION. CLPR IS EXTENDED IN ONE YEAR INCREMENTS OR UNTIL THE PETITION TO REMOVE CONDITIONS IS ADJUDICATED. UNFORTUNATELY, SOME CIS OFFICES HAVE BEEN RELUCTANT TO PROVIDE DOCUMENTARY EVIDENCE OF THE EXTENSION OF CLPR STATUS, PRESUMABLY IN IGNORANCE OF THE LAW. ALIENS HAVE ALSO EXPERIENCED DIFFICULTY OBTAINING ADVANCE PERMISSION TO TRAVEL DURING THIS PERIOD. THIS DIFFICULTY IS NOT EXPERIENCED IN ALL INSTANCES AND IT MAY ABATE AS LOCAL CIS OFFICES BECOME MORE FAMILIAR WITH THE LAW. DELAYS AND IMPROPER DENIALS OF DOCUMENTS EVIDENCING EXTENDED CLPR STATUS AND ADVANCE PAROLE CANNOT BE RULED OUT. DENIAL OF SUCH DOCUMENTS DOES NOT END THE LAWFUL STATUS GRANTED BY STATUTE.

## **REMOVAL OF CONDITIONS NOT GUARANTEED**

IN THE HISTORY OF THE EB-5 PROGRAM, INS (NOW CIS) MODIFIED THE REQUIREMENTS FOR REMOVAL OF CONDITIONS AFTER THE TIME THAT SOME INVESTORS WERE GRANTED CLPR. AS A RESULT OF THIS ACTION, SOME OF THOSE INVESTORS WERE UNABLE TO COMPLY WITH THE NEW REQUIREMENTS, CREATING THE POSSIBILITY THAT THEY WOULD BE REMOVED FROM THE UNITED STATES. SOME OF THESE INVESTORS



## **TRAVEL DURING ADJUSTMENT OF STATUS PROCESSING**

AN ALIEN INVESTOR WHO LEAVES THE UNITED STATES WITHOUT ADVANCE PERMISSION WHILE AN AOS APPLICATION IS PENDING IS DEEMED TO HAVE ABANDONED THAT APPLICATION UNLESS THE APPLICANT HAS BEEN ADMITTED IN AND CONTINUES TO HOLD VALID H OR L NON-IMMIGRANT STATUS PENDING ADJUDICATION OF THE AOS APPLICATION.

ADVANCE PERMISSION TO DEPART THE U.S. IS ISSUED ROUTINELY IF THE ALIEN ARTICULATES A *BONA FIDE* NEED TO TRAVEL. IT IS NOT NECESSARY TO DEMONSTRATE AN EMERGENT NEED TO TRAVEL; ANY PURPOSE NOT CONTRARY TO LAW IS USUALLY DEEMED SUFFICIENT. ADVANCE PERMISSION, KNOWN AS ADVANCE PAROLE, IS USUALLY GRANTED FOR MULTIPLE ENTRIES DURING THE TIME REQUIRED TO COMPLETE THE AOS PROCESS, BUT NOT LONGER THAN ONE YEAR. IT MAY BE NECESSARY TO RE-APPLY FOR ADVANCE PAROLE IF THE AOS PROCESS IS NOT COMPLETE WITHIN A YEAR.

ADVANCE PAROLE IS NOT AVAILABLE TO ALIENS WHO ARE OUTSIDE THE U.S. IT IS IMPORTANT FOR AOS APPLICANTS WHO WISH THE RIGHT TO TRAVEL TO MAKE APPLICATION FOR ADVANCE PAROLE WHILE THEY ARE IN THE U.S. THEY MUST REMAIN IN THE U.S. UNTIL ADVANCE PAROLE IS GRANTED TO AVOID ABANDONMENT OF THE AOS APPLICATION. ADVANCE PAROLE APPLICATIONS MAY TAKE ABOUT 60-90 DAYS TO BE GRANTED. PROCESSING TIMES MAY BE LONGER IF AN APPLICANT IS SUBJECTED TO EXTENDED BACKGROUND CHECKING. IN DEMONSTRATED EMERGENT CIRCUMSTANCES, AN AOS APPLICANT MAY SEEK EXPEDITED ADVANCE PAROLE.

ALIEN INVESTORS ADMITTED TO THE UNITED STATES IN ANY NON-IMMIGRANT STATUS WHO HAVE OBTAINED ADVANCE PAROLE DURING THE AOS PROCESS SHOULD CONSULT WITH IMMIGRATION COUNSEL BEFORE TRAVELING. RE-ADMISSION TO THE U.S. USING THE ADVANCE PAROLE DOCUMENT MAY JEOPARDIZE THE NON-IMMIGRANT STATUS OF THE ALIEN'S FAMILY MEMBERS WHO DID NOT TRAVEL. THE CONSEQUENCES, IF ANY, OF THIS SITUATION SHOULD BE EXAMINED PRIOR TO TRAVEL.

## **EMPLOYMENT DURING THE ADJUSTMENT OF STATUS PROCESSING**

APPLICANTS FOR AOS WHO WISH TO WORK IN THE UNITED STATES MUST OBTAIN EMPLOYMENT AUTHORIZATION UNLESS THEY HAVE BEEN ADMITTED TO THE U.S. IN A NON-IMMIGRANT STATUS THAT CONFERS EMPLOYMENT AUTHORIZATION AND DOES NOT END BEFORE AOS IS GRANTED. SELF-EMPLOYMENT REQUIRES EMPLOYMENT AUTHORIZATION.

EMPLOYMENT AUTHORIZATION APPLICATIONS CURRENTLY TAKE 60-90 DAYS TO BE ADJUDICATED. PROCESSING TIMES MAY BE LONGER IF AN APPLICANT IS SUBJECTED TO EXTENDED BACKGROUND CHECKING. EMPLOYMENT AUTHORIZATION IS USUALLY GRANTED DURING THE TIME REQUIRED TO COMPLETE THE AOS PROCESS, BUT NOT LONGER THAN ONE YEAR. IT MAY BE NECESSARY TO RE-APPLY FOR EMPLOYMENT AUTHORIZATION IF THE AOS PROCESS IS NOT COMPLETE WITHIN A YEAR. TO AVOID A LAPSE IN EMPLOYMENT AUTHORIZATION RE-APPLICATIONS SHOULD BE MADE SUFFICIENTLY IN ADVANCE OF THE EXPIRY OF EXISTING AUTHORIZATION. EMPLOYMENT WITHOUT AUTHORIZATION AT ANY TIME IN THE U.S. IS A VIOLATION OF IMMIGRATION STATUS AND MAY JEOPARDIZE THE RIGHT TO ADJUST STATUS.

## **ADJUSTMENT OF STATUS CANNOT BE GUARANTEED**

AOS IS GRANTED IN THE DISCRETION OF CIS. ITS DECISION IS UNREVIEWABLE. AN ALIEN WHOSE AOS APPLICATION HAS BEEN DENIED MAY REQUEST THAT THE CASE TO BE RE-CONSIDERED BY THE SAME OFFICE THAT DENIED AOS. IF THE REQUEST TO RE-OPEN OR RE-CONSIDER THE CASE IS DENIED, OR, IF, AFTER SUCH A REVIEW, THE ALIEN FAILS TO CONVINCE THIS OFFICE TO REVERSE ITS ORIGINAL DECISION, THE ALIEN IS WITHOUT FURTHER RECOURSE.

ALIENS ADMITTED IN UNEXPIRED NON-IMMIGRANT STATUS WHO ARE DENIED AOS TO CLPR ARE USUALLY ENTITLED TO REMAIN IN THE U.S. IN THAT STATUS AND MAY SEEK AN EXTENSION OF THAT NON-IMMIGRANT STATUS OR SEEK A CHANGE TO A DIFFERENT NON-IMMIGRANT STATUS FOR WHICH THEY ARE QUALIFIED. AT

CONSULAR PROCESSING TO OBTAIN A PERMANENT RESIDENT VISA. (SEE THE DISCUSSION, ABOVE, ON CONSULAR PROCESSING AND SEE THE SECTION ON IMMIGRATION RISK FACTORS ALIENS, BELOW).

ALIENS SEEKING AOS MUST ALSO COMPLY WITH REQUIREMENTS PECULIAR TO THE AOS PROCESS. ALIENS WHO DO NOT MEET THESE ADDITIONAL REQUIREMENTS WILL BE REQUIRED TO USE CONSULAR PROCESSING TO OBTAIN A CLPR VISA, WHICH WILL NECESSITATE A DEPARTURE FROM THE UNITED STATES. ALIENS ADMITTED IN CERTAIN NON-IMMIGRANT STATUSES MAY ENCOUNTER MORE DIFFICULTIES (AND MAY NOT BE SUCCESSFUL) ADJUSTING STATUS THAN ALIENS ADMITTED IN OTHER NON-IMMIGRANT STATUSES. INVESTORS SHOULD CONSULT WITH IMMIGRATION COUNSEL REGARDING THESE ISSUES BEFORE THE I-526 PETITION IS FILED.

AN ALIEN INVESTOR OR THE INVESTOR'S SPOUSE OR CHILDREN WHO ARE ELIGIBLE FOR CLPR MAY NOT BE ELIGIBLE FOR AOS IF THEY: (1) ARE OR WERE EMPLOYED IN THE U.S. WITHOUT AUTHORIZATION; (2) WERE NOT IN LAWFUL STATUS ON THE DATE THEIR AOS APPLICATION WAS FILED OR IF THEY FAILED TO MAINTAIN LAWFUL STATUS THEREAFTER; (3) WERE EVER OUT OF STATUS DURING EARLIER ADMISSIONS TO THE U.S.; (4) ARE ADMITTED IN CERTAIN NON-IMMIGRANT STATUSES, SUCH AS "A", "G", "E" OR "J" (UNLESS THE TWO-YEAR FOREIGN RESIDENCY REQUIREMENT DOES NOT APPLY OR A WAIVER OF THE REQUIREMENT HAS BEEN OBTAINED); (5) HAVE BEEN IN REMOVAL PROCEEDINGS IN THE TEN YEARS PRIOR TO SEEKING AOS; (6) WERE ADMITTED UNDER THE VISA WAIVER PROGRAM AT THE TIME AOS IS SOUGHT; (7) OBTAINED CLPR AS THE SPOUSE OF A U.S. CITIZEN OR AS THE SON OR DAUGHTER OF A SPOUSE OF A U.S. CITIZEN AND HAVE NOT ABANDONED THIS CLPR PRIOR TO SEEKING AOS; OR, (8) OBTAINED ADMISSION TO ENTER THE U.S. AS A NON-IMMIGRANT (TEMPORARILY) BY MISREPRESENTING THAT THEY WOULD DEPART THE U.S. WHEN THEIR TEMPORARY PERIOD OF ADMISSION EXPIRED. UNLESS THE ADJUSTMENT APPLICANT IS ADMITTED TO THE U.S. IN H-1B, L-1 OR O-1 NON-IMMIGRANT STATUS, THIS MISREPRESENTATION IS DEEMED TO HAVE OCCURRED IF THE ALIEN INVESTOR, ADMITTED AS A NON-IMMIGRANT, DEMONSTRATES IMMIGRANT INTENT WITHIN 60 DAYS AFTER ADMISSION. MAKING THE INVESTMENT, FILING THE I-526 OR APPLYING FOR AOS WITHIN THIS 60 DAY PERIOD MAY BE VIEWED BY CIS AS EVIDENCE OF IMMIGRANT INTENT AND MAY RESULT IN THE DENIAL OF AOS. IN SUCH AN EVENT, THE INVESTOR WILL BE REQUIRED TO DEPART THE U.S. AND WILL NEED TO SEEK A CLPR VISA THROUGH CONSULAR PROCESSING. IN THIS PROCESS, THE CONSUL MAY REQUIRE THE INVESTOR TO SEEK A WAIVER OF EXCLUSION FOR HAVING MISREPRESENTED THE PURPOSE OF ENTRY UPON THE ADMISSION AS A NON-IMMIGRANT. WAIVERS ARE GRANTED IN THE UNREVIEWABLE DISCRETION OF THE CIS AND THE PROCESSING TIME FOR WAIVER APPLICATIONS IS FREQUENTLY SIGNIFICANT.

THERE MAY BE ADDITIONAL REASONS WHY AN ALIEN MAY NOT ADJUST STATUS, WHICH IS A BENEFIT GRANTED IN THE DISCRETION OF CIS. THERE IS NO APPEAL FROM A DENIAL OF AOS; THE ONLY RELIEF AVAILABLE IS A REQUEST TO RE-OPEN OR RE-CONSIDER THE AOS APPLICATION. INVESTORS SHOULD CONSULT WITH IMMIGRATION COUNSEL TO DETERMINE IF THEY, THEIR SPOUSE AND THEIR CHILDREN ARE ELIGIBLE FOR AOS.

DURING AOS PROCESSING, THE APPLICANT WILL BE REQUIRED TO SUBMIT A MEDICAL EXAMINATION AND WILL RECEIVE INSTRUCTIONS FROM CIS REGARDING BIOMETRIC DATA COLLECTION AND AN INTERVIEW. THE INTERVIEW MAY BE WAIVED BY CIS, BUT THE WAIVER SHOULD NOT BE EXPECTED. CIS USES PROFILING INFORMATION TO DETERMINE WHO WILL BE INTERVIEWED AND IT ALSO INTERVIEWS SOME AOS APPLICANTS TO MAINTAIN THE INTEGRITY OF ITS SCREENING PROCESS. THERE IS NO FORMAL PROCESS TO REQUEST THE WAIVER OF AN INTERVIEW. IF THE INVESTOR IS INTERVIEWED, THE SPOUSE AND CHILDREN OF THE INVESTOR WILL BE REQUIRED TO ATTEND THE INTERVIEW.

THE CIS TEXAS SERVICE CENTER CURRENTLY HAS JURISDICTION OF THE AOS PROCESS FOR INVESTORS IN THE PROJECT. IT WILL SCHEDULE THE INTERVIEW OF INVESTORS IN THE PROJECT. THE TEXAS SERVICE CENTER IS CURRENTLY REPORTING A SIX MONTH PROCESSING TIME FOR AOS APPLICATIONS. THE INTERVIEW FOLLOWS THIS PROCESSING AND IS CONDUCTED AT A CIS OFFICE NEAR THE INVESTOR'S RESIDENCE. CIS USES THE INTERVIEW TO UPDATE INFORMATION ABOUT AOS APPLICANTS THAT MAY HAVE CHANGED SUBSEQUENT TO THE FILING OF THE AOS APPLICATION AND TO EXPLORE ANY ISSUE THAT CIS BELIEVES IS RELEVANT TO DECIDING THE AOS CASE. TYPICALLY, CLPR IS CONFERRED ON THE AOS APPLICANTS AT THE CONCLUSION OF THE INTERVIEW.

DETECTS PROBLEMS IN THE VISA APPLICATION, THE UNDERLYING I-526 PETITION OR DURING THE INTERVIEW PROCESS. VISA APPLICANTS SHOULD ALLOW ABOUT SIX TO TWELVE MONTHS TO COMPLETE CONSULAR PROCESSING, ALTHOUGH TIMES FOR PROCESSING VARY GREATLY AMONG CONSULAR POSTS.

### **VISA ISSUANCE NOT GUARANTEED**

DECISIONS BY CONSULS ARE DISCRETIONARY AND UNREVIEWABLE. CIS AND DOS REPORT RECENT EFFORTS TO COMMUNICATE MORE EFFICIENTLY REGARDING THEIR RESPECTIVE ROLES IN DETERMINING THE ELIGIBILITY OF EB-5 INVESTORS FOR CLPR VISAS. THERE CANNOT BE ANY ASSURANCE THAT IMPROVED COMMUNICATIONS WILL OCCUR GENERALLY OR WITH RESPECT TO A PARTICULAR INVESTOR OR THE INVESTOR'S SPOUSE OR MINOR CHILDREN. NEITHER MAY IT BE ASSURED THAT IMPROVED COMMUNICATIONS WILL RESULT IN THE ISSUANCE OF A VISA. OTHER FACTORS THAT A CONSUL MAY, WITH UNREVIEWABLE DISCRETION, ELECT TO CONSIDER COULD RESULT IN THE DENIAL OF A VISA.

VISA APPLICANTS SHOULD NOT CHANGE ANY LIVING, EMPLOYMENT, SCHOOLING OR OTHER LIFESTYLE ARRANGEMENTS IN THEIR COUNTRY OF RESIDENCE BEFORE THEY ARE ISSUED A CLPR VISA BASED UPON AN APPROVED I-526, PETITION.

### **ADMISSION AFTER CLPR VISA ISSUED NOT GUARANTEED**

AFTER ISSUANCE, CLPR VISAS REMAIN VALID FOR SIX MONTHS. DURING THIS PERIOD, THE HOLDER OF THE VISA MUST USE IT TO APPLY FOR ADMISSION TO THE UNITED STATES AT A DESIGNATED PORT OF ENTRY. THE PORT OF ENTRY IS FREQUENTLY IN AN INTERNATIONAL AIRPORT. WHEN THE ALIEN ARRIVES AT THE PORT OF ENTRY, HE OR SHE WILL PRESENT THE CLPR VISA TO A CUSTOMS AND BORDER PROTECTION (CBP) OFFICER WHO HAS THE AUTHORITY TO ADMIT THE INVESTOR TO THE UNITED STATES AS A CLPR. THIS PROCESS IS KNOWN AS INSPECTION. GENERALLY, POSSESSION OF A VALID IMMIGRANT VISA WILL RESULT IN AN ADMISSION UNLESS THE INSPECTING OFFICER SUSPECTS FRAUD, THE ALIEN'S TRAVEL DOCUMENTS ARE NOT IN ORDER OR THE ALIEN HAS BECOME INADMISSIBLE IN THE TIME BETWEEN THE DATE OF VISA ISSUANCE AND THE DATE ADMISSION IS SOUGHT. POSSESSION OF A CLPR VISA DOES NOT GUARANTEE ADMISSION TO THE UNITED STATES.

### **ADMISSION AFTER INVESTING, FILING THE I-526 OR DURING CONSULAR PROCESSING**

ADMISSION TO THE UNITED STATES AS A VISITOR OR IN MOST OTHER NON-IMMIGRANT STATUSES IS PREDICATED UPON THE INTENT TO DEPART THE COUNTRY AT THE END OF THE PERIOD OF ADMISSION. THIS NON-IMMIGRANT INTENT MAY BE DIFFICULT TO ESTABLISH ONCE AN INVESTOR HAS PAID FUNDS INTO AN EB-5 PROJECT OR FILES AN I-526, AS THE SOLE PURPOSE OF THIS INVESTMENT AND PETITION IS TO ESTABLISH THAT THE INVESTOR QUALIFIES WITHIN A PROGRAM THAT AWARDS LAWFUL PERMANENT RESIDENCE. THE DIFFICULTY OF MAINTAINING NON-IMMIGRANT INTENT IS MADE MORE DIFFICULT UPON COMMENCING CONSULAR PROCESSING, A CLEAR REQUEST FOR LAWFUL PERMANENT RESIDENCE AS SOON AS PROCESSING TIMES PERMIT. INVESTORS SHOULD CONSULT WITH COMPETENT COUNSEL TO DETERMINE HOW TO MAXIMIZE THE LIKELIHOOD OF A TEMPORARY (NON-IMMIGRANT) ADMISSION TO THE UNITED STATES SUBSEQUENT TO MAKING THE INVESTMENT OR FILING OF EITHER OF THESE CASES. DESPITE BEST EFFORTS, AN INSPECTOR MAY DENY ADMISSION UNDER THESE CIRCUMSTANCES. IN THIS EVENT, THE INVESTOR WILL LIKELY BE UNABLE TO ENTER THE UNITED STATES UNTIL THE CLPR VISA IS ISSUED.

### **ADJUSTMENT OF STATUS**

THE ADJUSTMENT OF STATUS (AOS) PROCEDURE IS DESIGNED TO PERMIT ALIENS WHO HAVE BEEN ADMITTED TO THE UNITED STATES AS NONIMMIGRANTS OR WHO HAVE BEEN PAROLED INTO THE COUNTRY TO APPLY FOR ADMISSION AS PERMANENT RESIDENTS WITHOUT LEAVING THE COUNTRY. THESE NONIMMIGRANTS MUST ESTABLISH THAT THEY ARE ADMISSIBLE PERMANENTLY, MEETING THE SAME STANDARDS AS ALIENS WHO USE

INVESTMENT DOCUMENTED BY THE I-526, PETITION HAS QUALIFIED THE INVESTOR AS AN ALIEN ENTREPRENEUR.

THE APPLICATION FOR ADMISSION IS A SEPARATE AND SUBSEQUENT PROCESS THAT CONCERNS ISSUES COMMON TO ALL ALIENS WHO WISH TO LIVE IN THE UNITED STATES PERMANENTLY. ADMISSION AS A CLPR MAY BE SOUGHT USING ONE OF TWO METHODS: CONSULAR PROCESSING OR ADJUSTMENT OF STATUS.

## CONSULAR PROCESSING

CONSULAR PROCESSING IS DESIGNED FOR ALIENS WHO ARE LIVING OUTSIDE OF THE UNITED STATES, WHO PREFER TO PROCESS AT A CONSULATE FOR STRATEGIC REASONS OR AS A MATTER OF CONVENIENCE OR ARE INELIGIBLE TO ADJUST STATUS. TYPICALLY, THE CONSULAR POST, WHICH IS CHOSEN AT THE TIME THE I-526, PETITION IS FILED, IS IN THE COUNTRY OF LAST RESIDENCE, I.E., THE LAST PRINCIPAL ACTUAL DWELLING PLACE. IN VERY LIMITED INSTANCES, USUALLY INVOLVING A RECOGNIZED HARDSHIP, A DIFFERENT CONSULAR POST MAY PROCESS FOR LAWFUL PERMANENT RESIDENCE.

CONSULATES ISSUE VISAS, A TRAVEL DOCUMENT, USUALLY AFFIXED TO A PASSPORT THAT AUTHORIZES THE HOLDER TO SEEK ADMISSION TO THE UNITED STATES AT A PORT OF ENTRY. THE VISA IS ISSUED FOR AN IMMIGRATION STATUS THAT A CONSUL BELIEVES THE VISA APPLICANT IS QUALIFIED TO HOLD. IN AN EB-5 CASE, THE VISA MAY BE SOUGHT FROM A CONSULATE ONLY AFTER THE INVESTOR'S I-526 PETITION IS APPROVED. AN EB-5 INVESTOR AND THE INVESTOR'S SPOUSE AND QUALIFYING CHILDREN ARE GRANTED CONDITIONAL LAWFUL PERMANENT RESIDENT VISAS INITIALLY (SEE DISCUSSION ON REMOVAL OF CONDITIONS AT PAGE 29).

BEFORE ISSUING AN IMMIGRANT VISA, THE CONSULAR POST MUST DETERMINE IF EACH ALIEN IS ADMISSIBLE TO THE U.S. APPROVAL OF THE I-526, PETITION DOES NOT BY ITSELF ESTABLISH ADMISSIBILITY. AN ALIEN IS ADMISSIBLE WHO PROVES THAT NO GROUNDS OF INADMISSIBILITY EXIST AND THE ALIEN HAS PROPER TRAVEL DOCUMENTS. (SEE THE DISCUSSION ON IMMIGRATION RISK FACTORS, BELOW, FOR A NON-EXHAUSTIVE LIST OF THE GROUNDS OF INADMISSIBILITY). WAIVERS ARE AVAILABLE FOR CERTAIN OF THE MANY GROUNDS OF INADMISSIBILITY, BUT THE GRANT OF A WAIVER IS IN THE DISCRETION OF THE GOVERNMENT AND ALIENS SEEKING WAIVERS EXPERIENCE LENGTHY DELAYS IN ADJUDICATION OF WAIVER APPLICATIONS. INVESTORS SHOULD CONSULT WITH IMMIGRATION COUNSEL TO DETERMINE IF ANY GROUNDS OF INADMISSIBILITY MAY AFFECT THE INVESTOR'S ADMISSION OR THE ADMISSION OF THE INVESTOR'S SPOUSE OR CHILDREN TO THE UNITED STATES AND IF A WAIVER IS AVAILABLE FOR SUCH GROUNDS OF INADMISSIBILITY.

IF THE CONSULAR POST FINDS THAT THE INVESTOR IS ADMISSIBLE, IT WILL ISSUE A CLPR VISA TO THE INVESTOR. THE CONSULAR POST WILL ALSO DETERMINE IF THE SPOUSE AND THE QUALIFYING CHILDREN OF THE INVESTOR ARE ADMISSIBLE. A DETERMINATION OF ADMISSIBILITY MUST BE MADE AS TO EACH VISA APPLICANT. THERE IS NO GUARANTEE THAT ALL MEMBERS OF THE INVESTOR'S FAMILY WILL BE GRANTED A CLPR VISA. IF THE INVESTOR IS DENIED A CLPR VISA, APPLICATIONS BY THE SPOUSE AND CHILDREN OF THE INVESTOR FOR SUCH A VISA WILL BE DENIED.

NOTABLY, CONSULAR POSTS ARE ADMINISTERED BY THE U.S. DEPARTMENT OF STATE (DOS), AN AGENCY UNRELATED TO THE DEPARTMENT OF HOMELAND SECURITY (DHS) AND ITS SUB-AGENCY, CIS. CONSULAR PROCESSING SUBJECTS BOTH THE VISA APPLICANT AND THE I-526, PETITION TO THE SCRUTINY OF A SECOND GOVERNMENT AGENCY WHOSE DECISIONS ARE NOT APPEALABLE. IF THE CONSULAR OFFICER, BASED UPON INFORMATION NOT AVAILABLE TO CIS IN ITS ADJUDICATIONS PROCESS, SUSPECTS FRAUD OR MISREPRESENTATION IN THE I-526, PETITION PROCESS OR IF THE CONSUL DOUBTS THE ELIGIBILITY FOR LAWFUL PERMANENT RESIDENT STATUS, THE CONSUL MAY RETURN THE CASE TO CIS FOR RE-ADJUDICATION OF THE I-526, PETITION. IF CIS REAFFIRMS ITS APPROVAL, THE CONSUL IS EXPECTED TO ISSUE A CLPR VISA, ASSUMING THERE ARE NO OTHER GROUNDS OF INADMISSIBILITY. REAFFIRMATIONS BY CIS ARE LOW ON THE AGENCY'S WORK LOAD PRIORITY WHICH WILL DELAY THE OUTCOME OF SUCH A PROCEDURE SIGNIFICANTLY, SOMETIMES FOR YEARS.

CONSULAR PROCESSING BEGINS WHEN CIS TRANSMITS THE APPROVED ALIEN'S I-526 PETITION TO THE NATIONAL VISA CENTER (NVC). AT APPROPRIATE INTERVALS, THE NVC ISSUES INSTRUCTIONS AND APPOINTMENT PACKAGES AND REQUESTS REQUIRED DOCUMENTS AND INFORMATION. IN TIME, THE ALIEN WILL BE INSTRUCTED TO OBTAIN FINGERPRINTS AND A PHYSICAL EXAMINATION AND TO REPORT TO A CONSULAR INTERVIEW. CLPR VISAS USUALLY ARE ISSUED SHORTLY AFTER THE INTERVIEW UNLESS THE CONSUL

**INVESTMENT CAPITAL:** THE PETITION MUST BE SUPPORTED BY EVIDENCE THAT THE PETITIONER HAS INVESTED (OR IS ACTIVELY IN THE PROCESS OF INVESTING) THE MINIMUM REQUIRED CAPITAL. CIS EXPECTS THESE FUNDS TO BE "AT RISK", CONNOTING AN IRREVOCABLE COMMITMENT TO THE ENTERPRISE. THE FUNDS MUST BE USED BY THE ENTERPRISE EXCLUSIVELY TO CREATE EMPLOYMENT. FUNDS USED TO PAY ADMINISTRATIVE COSTS OR OTHER OBLIGATIONS UNDERTAKEN TO PROMOTE THE INVESTMENT IN THE ENTERPRISE ARE NOT DEEMED "AT RISK".

**SOURCE OF CAPITAL:** EVIDENCE MUST SUPPORT THE LEGAL ACQUISITION OF CAPITAL. FUNDS EARNED OR OBTAINED IN THE UNITED STATES WHILE THE INVESTOR WAS IN UNLAWFUL IMMIGRATION STATUS ARE NOT DEEMED TO BE LAWFULLY ACQUIRED. IF FUNDS ARE NOT LAWFULLY ACQUIRED, THEY MAY NOT BE DEEMED "AT RISK".

**MANAGERIAL ROLE:** THE INVESTOR IS EXPECTED TO PARTICIPATE IN THE MANAGEMENT OF THE NEW ENTERPRISE BY ASSISTING IN THE FORMULATION OF THE ENTERPRISE'S BUSINESS POLICY, BY PARTICIPATING IN ONE OR MORE OF THE ACTIVITIES PERMITTED IN SECTION 3423(B) OF THE VERMONT REVISED UNIFORM LIMITED PARTNERSHIP ACT ("VRULPA"), AND AS OTHERWISE SET FORTH IN THE LIMITED PARTNERSHIP AGREEMENT. LIMITED PARTNER INVESTORS IN AN EB-5 ENTERPRISE MUST HAVE ALL THE RIGHTS AND DUTIES USUALLY ACCORDED TO LIMITED PARTNERS BY THE UNIFORM LIMITED PARTNERSHIP ACT (ULPA), AS ADOPTED IN VERMONT AS VRULPA. THERE MAY BE A CONFLICT FOR INVESTORS SEEKING TO MAINTAIN THE LIABILITY PROTECTIONS ACCORDED TO LIMITED PARTNERS UNDER VRULPA AND THE IMMIGRATION LAW REQUIREMENT THAT EB-5 INVESTORS MUST BE INVOLVED IN MANAGEMENT. EACH INVESTOR SHOULD SEEK COMPETENT COUNSEL TO ASSESS THIS RISK.

**AMOUNT OF THE INVESTMENT:** THE PETITION MUST BE SUPPORTED BY EVIDENCE THAT THE REQUIRED MINIMUM SUM HAS BEEN INVESTED. THIS SUM MAY BE REDUCED CURRENTLY FROM \$1,000,000 TO \$500,000 IF THE ENTERPRISE IS LOCATED IN A TEA. SEE THE EARLIER DISCUSSION ON TARGETED EMPLOYMENT AREAS (TEAS).

**EMPLOYMENT CREATION:** THERE MUST BE EVIDENCE THAT 10 JOBS WILL BE CREATED ON ACCOUNT OF EACH EB-5 INVESTMENT. SEE THE EARLIER DISCUSSION ABOUT QUALIFYING JOBS AND INVESTMENT IN A REGIONAL CENTER, WHICH MAY PERMIT COUNTING EMPLOYMENT CREATED OUTSIDE THE QUALIFYING ENTERPRISE.

### **THE I-526 PETITION APPROVAL NOT GUARANTEED**

THE I-526, PETITION FOR ALIEN ENTREPRENEUR WILL BE APPROVED ONLY IF CIS IS SATISFIED THAT THE FOREGOING CRITERIA HAVE BEEN MET. THE DETERMINATION OF WHETHER THESE CRITERIA HAVE BEEN ESTABLISHED IS WITHIN THE DISCRETION OF CIS. IT IS ALSO WITHIN THE POWER, IF NOT THE DISCRETIONARY AUTHORITY, OF CIS TO SEEK INFORMATION ABOUT OTHER ASPECTS OF THE INVESTMENT AND THE RELATIONSHIP OF THE INVESTOR TO THE ENTERPRISE. CIS FREQUENTLY REINTERPRETS THE MEANING OF QUALIFYING CRITERIA. THERE CAN BE NO CERTAINTY THAT COMPLIANCE WITH THE FOREGOING CRITERIA, SUPPORTED BY APPROPRIATE DOCUMENTATION, WILL LEAD TO THE APPROVAL OF AN I-526.

IN THE EVENT THAT CIS DENIES THE I-526, PETITION, THE INVESTOR MAY NOT PROCEED WITH THE NEXT STEP IN THE IMMIGRATION PROCESS, CONSULAR PROCESSING OR ADJUSTMENT OF STATUS. INSTEAD, THE INVESTOR MUST DECIDE WHETHER TO APPEAL THE DENIAL OF THE I-526, PETITION (WHICH WILL REQUIRE THE CONSENT OF THE GENERAL PARTNER OF THE PROJECT) OR ABANDON THE PROSPECT OF INVESTING IN THE PROJECT AND OBTAINING LAWFUL PERMANENT RESIDENT STATUS.

### **CONSULAR PROCESSING OR ADJUSTMENT OF STATUS**

APPROVAL OF THE I-526, PETITION MEANS THAT THE ALIEN AND THE ALIEN'S SPOUSE AND CHILDREN UNDER THE AGE OF 21 YEARS MAY APPLY FOR ADMISSION AS CONDITIONAL LAWFUL PERMANENT RESIDENTS (CLPR). APPROVAL OF THE I-526 PETITION DOES NOT MEAN THAT THE INVESTOR HAS BEEN GRANTED ADMISSION TO THE UNITED STATES AS A LAWFUL PERMANENT RESIDENT. APPROVAL OF AN I-526 MEANS THAT THE

IF NEITHER OF THE EVENTS DESCRIBED UNDER 1 AND 2 ABOVE OCCUR, THE INVESTOR AT HIS OPTION MAY EITHER REMAIN INVESTED IN THE PROJECT, OR REQUEST IN WRITING A REFUND OF THE CAPITAL CONTRIBUTION OF \$500,000. UPON RECEIPT OF A REQUEST OF REFUND TO THE GENERAL PARTNER, THE CAPITAL CONTRIBUTION WILL BE REFUNDED BY THE LIMITED PARTNERSHIP WITHIN A PERIOD OF 90 DAYS FROM RECEIPT OF SUCH REQUEST AND THE INVESTOR'S INTEREST AS A LIMITED PARTNER SHALL AUTOMATICALLY BE TERMINATED AND THE INVESTOR SHALL NO LONGER HAVE ANY OF THE RIGHTS AND BENEFITS OF OWNERSHIP OF AN INTEREST OR ANY RIGHT TO PARTICIPATE IN ANY MANNER WHATSOEVER IN THE AFFAIRS OF THE PARTNERSHIP. THE INVESTOR'S RIGHTS ARE LIMITED SOLELY TO THE RETURN OF THEIR CAPITAL CONTRIBUTION OF \$500,000.

IN THE EVENT AN INVESTOR'S I-526 PETITION IS DENIED AT ANY TIME, FOR REASONS OTHER THAN FRAUD OR MATERIAL MISREPRESENTATION, THE INVESTOR'S RIGHTS ARE LIMITED SOLELY TO THE RETURN OF THE INVESTOR'S \$500,000 CAPITAL CONTRIBUTION (BUT NOT THE \$50,000 ADMINISTRATION FEE) WITHIN NINETY (90) DAYS OF WRITTEN REQUEST THEREFOR TO THE GENERAL PARTNER.

IF CIS DENIES AN INVESTOR'S I-526 PETITION ON THE BASIS OF FRAUD OR MATERIAL MISREPRESENTATION IN THE INVESTOR'S I-526 PETITION OR ITS SUPPORTING DOCUMENTS PROVIDED BY THE INVESTOR, THE LIMITED PARTNERSHIP WILL BE ENTITLED TO RETAIN PAYMENT OF ALL FUNDS, INCLUDING THE INVESTOR'S \$500,000 CAPITAL CONTRIBUTION, INTEREST PAID ON ACCOUNT OF THE INVESTMENT AND ADMINISTRATION FEES.

*So the investment is forfeited!*

IN JUNE 1997, THE STATE OF VERMONT, AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT (ACCD), WAS GRANTED A DESIGNATION AS AN APPROVED REGIONAL CENTER UNDER THIS PILOT PROGRAM (EXHIBIT F). AN INVESTMENT IN A COMMERCIAL ENTERPRISE SITUATED WITHIN THE REGIONAL CENTER, THE STATE OF VERMONT, THAT FOSTERS ECONOMIC EXPANSION THROUGH INCREASED EXPORTS, GREATER REGIONAL PRODUCTIVITY, JOB CREATION OR ADDITIONAL DOMESTIC CAPITAL INVESTMENT QUALIFIES FOR THE BROADER VIEW OF JOB CREATION.

THE JAY PEAK PROGRAM HAS CONDUCTED AN ECONOMIC AND STATISTICAL ANALYSIS TO DETERMINE THE NUMBER OF JOBS EXPECTED TO BE CREATED AS A RESULT OF 150 FOREIGN INVESTORS EACH CONTRIBUTING \$500,000 USD TO THE PROGRAM. THIS ANALYSIS WAS CONDUCTED USING THE REGIONAL DYNAMICS ECONOMIC ANALYSIS MODEL ("REDYN").

THE CURRENT ANALYSIS FOCUSED ON THE PHASE II JAY PEAK PROJECT AS A SOURCE OF JOB CREATION, SO THAT IT IS MORE SPECIFIC THAN THE ANALYSIS THAT SUPPORTED THE REGIONAL CENTER DESIGNATION FOR THE GREATER STATE OF VERMONT. THIS ANALYSIS DEMONSTRATES THAT THE COMBINED PROJECT DEVELOPMENT AND BUSINESS ACTIVITIES CARRIED ON BY THE JAY PEAK HOTEL SUITES PHASE II LIMITED PARTNERSHIP, COUPLED WITH THE RESORT OWNER'S OPERATION OF NEW FACILITIES BUILT OUT BY THE RESORT OWNER WITHIN THE PARTNERSHIP PROJECT, TOGETHER WITH THE PROJECTED LONG TERM 10 YEAR CONSTRUCTION PROGRAM OF RESIDENTIAL CONDOMINIUMS AND TOWNHOUSES TO MEET THE HOUSING DEMAND GENERATED BY THE RESULTING RESORT FACILITIES CREATED BY THE PARTNERSHIP AND RESORT OWNER, IS EXPECTED TO CREATE 1,532 PERMANENT FULL TIME JOBS WITHIN THE STATE OF VERMONT, ACCD REGIONAL CENTER BY THE YEAR 2011. THE NUMBER OF JOBS WITHIN THE REGIONAL CENTER IS PROJECTED TO INCREASE TO MORE THAN 2000 BY THE YEAR 2015. THESE PROJECTED JOBS ARE IN EXCESS OF THE 1500 JOBS REQUIRED UNDER EB-5 LAW AND REGULATIONS IF ALL LIMITED PARTNERSHIP INTERESTS ARE SOLD TO FOREIGN INVESTORS USING THE EB-5 PROGRAM.

## THE I-526 PETITION PROCESS

FOR INVESTORS SEEKING LAWFUL PERMANENT RESIDENCE, THE FIRST STEP IN THE PROCESS IS TO FILE AN I-526, PETITION FOR ALIEN ENTREPRENEUR, TOGETHER WITH ACCOMPANYING EVIDENCE IN SUPPORT OF THE PROGRAM'S REQUIREMENTS. CIS ADJUDICATES I-526 PETITIONS BY REVIEWING THESE CRITERIA, AMONG OTHERS:

NEW COMMERCIAL ENTERPRISE: THERE MUST BE EVIDENCE THAT SHOWS THAT THE ENTERPRISE IS NEW AND AUTHORIZED TO TRANSACT BUSINESS.

STATISTICALLY VALID FORECASTING DEVICES WHICH INDICATE THE LIKELIHOOD THAT THE BUSINESS WILL RESULT IN INCREASED EMPLOYMENT.

EACH INVESTOR IN AN EB-5 PROJECT MUST DEMONSTRATE THAT THE INVESTMENT WILL RESULT IN THE CREATION OF AT LEAST TEN FULL-TIME POSITIONS FOR QUALIFYING EMPLOYEES (DIRECT OR INDIRECT). IF SOME OF THE LIMITED PARTNERS OF THE ENTERPRISE ARE NOT SEEKING LAWFUL PERMANENT RESIDENCE UNDER THE EB-5 PROGRAM, THE TOTAL NUMBER OF FULL-TIME POSITIONS CREATED FOR QUALIFYING EMPLOYEES BY THE INVESTMENT OF THESE LIMITED PARTNERS SHALL BE ALLOCATED SOLELY TO THOSE INVESTORS WHO ARE RELYING ON THE ENTERPRISE AS THE BASIS TO OBTAIN LAWFUL PERMANENT RESIDENCE. NO ALLOCATION IS REQUIRED AND NONE WILL BE MADE AMONG PERSONS NOT SEEKING LAWFUL PERMANENT RESIDENCE THROUGH THE EB-5 PROGRAM.

### **THE STATE OF VERMONT - A REGIONAL CENTER**

IN FURTHER SUPPORT OF THE EB-5 VISA PREFERENCE PROGRAM THE U.S. CONGRESS CREATED A PILOT PROGRAM, SCHEDULED TO SUNSET ON SEPTEMBER 30, 2008, THAT PROVIDED FOR THE AUTHORIZATION OF REGIONAL CENTERS BY THE U.S. DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE. ENTERPRISES LOCATED WITHIN A REGIONAL CENTER ARE NOT REQUIRED TO EMPLOY 10 WORKERS FOR EACH EB-5 QUALIFYING INVESTMENT. IT SUFFICES IF THE INVESTOR DEMONSTRATES THAT AT LEAST 10 QUALIFYING JOBS WILL BE CREATED DIRECTLY OR INDIRECTLY ON ACCOUNT OF THE INVESTMENT.

CURRENTLY, THERE IS LEGISLATION PENDING IN THE U.S. SENATE TO MAKE THE REGIONAL CENTER PILOT PROGRAM PERMANENT. IN ADDITION LEGISLATION (BILL H.R. 5569) TO EXTEND THE PROGRAM WAS APPROVED IN THE U.S. HOUSE OF REPRESENTATIVES ON JUNE 9, 2008 FOR FIVE YEARS COMMENCING OCTOBER 1, 2008. THIS BILL IS NOW PENDING IN THE SENATE.

UPON SUBSCRIBING TO THIS OFFERING AND BECOMING A LIMITED PARTNER, IT IS AT THE SOLE RESPONSIBILITY AND RISK OF THE FOREIGN INVESTOR TO FILE THEIR I-526 PETITION. THERE IS NO REFUND FOR FAILURE TO FILE THE I-526 PETITION.

THIS PROJECT RELIES UPON THE ON-GOING ABILITY TO COUNT INDIRECT EMPLOYMENT CREATED BY EACH INVESTOR. THE GENERAL PARTNER BELIEVES, BUT CANNOT KNOW, THAT THE REGIONAL CENTER PROGRAM WILL CONTINUE WITHOUT INTERRUPTION BASED UPON EFFORTS IN THE U.S. CONGRESS TO PREVENT THE PROGRAM FROM EXPIRING.

THE REGIONAL CENTER PILOT PROGRAM HAS SUNSETTED IN THE PAST, ONLY TO BE REAUTHORIZED RETROACTIVELY SO THAT NO INVESTOR RIGHTS WERE PREJUDICED BY A LAPSE IN THE PROGRAM. THE SAME SCENARIO MAY OCCUR SHOULD THE CURRENT PROGRAM END ON SEPTEMBER 30, 2008, BUT THIS RESULT CANNOT BE ASSURED.

IF THE REGIONAL CENTER PILOT PROGRAM LAPSES ON SEPTEMBER 30, 2008, FOR EACH INVESTOR WHOSE CASE IS FILED WITH USCIS PRIOR TO THAT DATE THEIR \$500,000 CAPITAL CONTRIBUTION SHALL REMAIN INVESTED IN THE PARTNERSHIP PROVIDED:

1. THE REGIONAL CENTER PILOT PROGRAM IS REAUTHORIZED RETROACTIVELY OR IS PENDING REAUTHORIZATION WITHIN A TWELVE MONTH PERIOD FOLLOWING ITS LAPSE, AND THE INVESTOR'S I-526 PETITION IS IN DUE COURSE ADJUDICATED;

OR

2. LEGISLATION IS ENACTED OR PENDING PROVIDING SUBSTANTIALLY SIMILAR IMMIGRATION BENEFITS TO INVESTORS AS UNDER THE LAPSED REGIONAL CENTER PILOT PROGRAM AND THE EB-5 PROGRAM WITHIN A TWELVE MONTH PERIOD FOLLOWING SUNSET OF THE REGIONAL CENTER PILOT PROGRAM, AND THE INVESTOR'S I-526 PETITION IS IN DUE COURSE ADJUDICATED.

UNLESS THEY ARE WITHIN AND RELY UPON AN APPROVED REGIONAL CENTER. WITH RESPECT TO THE MINIMUM INVESTMENT REQUIRED, THE PROJECT UTILIZES THE PROVISIONS OF THE ACT CONCERNING A TARGETED EMPLOYMENT AREA. TO MEET EMPLOYMENT CREATION REQUIREMENTS, THE PROJECT RELIES UPON THE FACT THAT JAY PEAK IS WITHIN THE VERMONT REGIONAL CENTER AUTHORIZED BY THE ACT CREATED UNDER A PILOT PROGRAM.

## AMOUNT OF INVESTMENT

AS A GENERAL RULE, THE EB-5 PROGRAM CALLS FOR A MINIMUM INVESTMENT OF \$1,000,000 USD. THIS SUM MAY BE REDUCED CURRENTLY TO \$500,000 USD IF THE ENTERPRISE THAT RECEIVES THE INVESTMENT IS SITUATED IN A TARGETED EMPLOYMENT AREA (TEA). TEA'S MUST MEET ONE OF TWO CRITERIA, THE FIRST, CONCERNING POPULATION, AND THE SECOND, CONCERNING THE RATE OF UNEMPLOYMENT.

THE PROJECT RELIES ON THE FACT THAT THE PHASE II JAY PEAK PROJECT IS SITUATED IN JAY, VERMONT, A TOWN WHOSE POPULATION IS 426 ACCORDING TO THE 2000 CENSUS. IF AN INVESTMENT IS MADE IN A TOWN OR CITY WHOSE POPULATION IS LESS THAN 20,000, THE INVESTMENT IS DEEMED TO HAVE BEEN MADE IN A TEA.

THE SECOND CRITERIA TO QUALIFY A CITY OR TOWN AS A TEA CONCERNS HIGH RATES OF UNEMPLOYMENT IN A CITY OR TOWN WHOSE POPULATION EQUALS OR EXCEEDS 20,000. THIS CRITERION IS NOT RELEVANT TO THE PROJECT. IN CONSEQUENCE OF THE PROJECT BEING SITUATED IN A TEA (BASED UPON THE POPULATION CRITERION), EACH INVESTOR IS CURRENTLY EXPECTED TO INVEST ONLY \$500,000 USD DIRECTLY TO THE ENTERPRISE'S OPERATIONS. ADMINISTRATIVE AND OTHER COSTS BORNE BY THE INVESTOR MAY NOT BE PAID FROM THIS SUM. IN THIS PROJECT, \$50,000.00 ADMINISTRATIVE FEES ARE PAYABLE BY EACH INVESTOR IN ADDITION TO THE REQUIRED \$500,000 MINIMUM INVESTMENT.

## COUNTING JOBS CREATED

TO QUALIFY AS AN EB-5 INVESTOR, EACH INVESTOR MUST DEMONSTRATE THAT 10 FULL-TIME, YEAR-ROUND JOBS WILL BE CREATED ON ACCOUNT OF THE INVESTMENT. THIS REQUIREMENT IS NOT AFFECTED BY THE LOCATION OF THE PROJECT IN A TEA (WHICH IS RELEVANT ONLY TO THE MINIMUM SUM OF THE INVESTMENT).

THESE JOBS MUST BE FOR U.S. CITIZENS, LAWFUL PERMANENT RESIDENTS AND THOSE LAWFULLY ADMITTED TO THE UNITED STATES, SUCH AS ASYLEES, REFUGEES, CONDITIONAL RESIDENTS AND SOME OTHERS. NON-IMMIGRANT (TEMPORARY) WORKERS ARE NOT INCLUDED IN THE COUNT. ALSO EXCLUDED ARE THE INVESTOR, THE INVESTOR'S SPOUSE AND THE INVESTOR'S CHILDREN.

A FULL-TIME JOB MEANS ONE THAT REQUIRES AT LEAST 35 HOURS EACH WEEK TO FULFILL. JOB SHARING IS PERMITTED SO LONG AS THE TOTAL WEEKLY-HOURS REQUIREMENT IS MET. BUT, THE EB-5 PROGRAM DOES NOT PERMIT THE COMBINATION OF PART-TIME JOBS IN AN EFFORT TO CREATE A FULL-TIME POSITION.

NORMALLY, UNDER THE EB-5 REGIME, A JOB IS DEEMED CREATED WHEN THE WORKER PROVIDES SERVICES OR LABOR TO THE NEW COMMERCIAL ENTERPRISE AND IS REMUNERATED ON THE PAYROLL OF THE NEW ENTERPRISE. INDEPENDENT CONTRACTORS ARE EXCLUDED FROM THE DIRECT JOB CREATION COUNT.

AN EXCEPTION TO THE REQUIREMENT OF PAYMENT OR OTHER REMUNERATION COMING DIRECTLY FROM THE NEW ENTERPRISE IS MADE IF THE ENTERPRISE IS LOCATED WITHIN A REGIONAL CENTER CREATED UNDER A PILOT PROGRAM FIRST ENACTED IN 1993. THE ENTIRE STATE OF VERMONT IS SUCH A REGIONAL CENTER. AN INVESTOR IN AN ENTERPRISE, SUCH AS THE JAY PEAK HOTEL SUITES PHASE II, ESTABLISHED IN VERMONT, IS PERMITTED TO DEMONSTRATE THAT SOME OF THE JOBS CREATED ON ACCOUNT OF THE INVESTMENT IN THE ENTERPRISE WILL BE INDIRECT JOBS, NOT ON THE PAYROLL OF THE ENTERPRISE. IT IS INCUMBENT UPON THE INVESTOR TO SHOW HOW MANY JOBS ARE EXPECTED TO BE CREATED INDIRECTLY BY RELIANCE UPON REASONABLE METHODOLOGIES SUCH AS MULTIPLIER TABLES, FEASIBILITY STUDIES, ANALYSES OF FOREIGN AND DOMESTIC MARKETS FOR THE GOODS OR SERVICES TO BE EXPORTED, AND OTHER ECONOMICALLY OR

*Who will provide these studies?*



POSSIBLE PURCHASE OF INTERESTS BY THE RESORT OWNER, ITS AFFILIATES, INVESTORS OR OFFICERS: IN THE EVENT THAT THE RESORT OWNER, ITS AFFILIATES, INVESTORS OR OFFICERS USES ITS OR ITS AFFILIATES' FUNDS OR FINANCIAL FACILITIES TO COMPLETE THE PROJECT, THE RESORT OWNER MAY ACQUIRE SOME LIMITED PARTNERSHIP INTERESTS. IF THESE INTERESTS ARE SIGNIFICANT, THE RESORT OWNER MAY BE ABLE TO INFLUENCE OR CONTROL CERTAIN MATTERS UPON WHICH THE LIMITED PARTNERS ARE ENTITLED TO VOTE UNDER THE TERMS OF THE LIMITED PARTNERSHIP AGREEMENT. ACCORDINGLY NO PERSON SHOULD PURCHASE ANY OF THE INTERESTS OFFERED HEREBY UNLESS HE OR SHE IS WILLING TO RELY ON THE POSSIBLE INVOLVEMENT BY THE RESORT OWNER IN THE AFFAIRS OF THE LIMITED PARTNERSHIP.

AN INVESTOR MAY SUFFER ADVERSE TAX CONSEQUENCES IN THE EVENT OF A SALE OF HIS LIMITED PARTNERSHIP INTEREST.

THE LIMITED PARTNERSHIP IS A STARTUP BUSINESS THAT DOES NOT HAVE AN OPERATING HISTORY. THE LIMITED PARTNERSHIP'S BUSINESS IS DEPENDENT UPON THE LIMITED PARTNERSHIP OBTAINING SUFFICIENT CAPITAL TO PROPERLY DEVELOP ITS SERVICES AND MARKETING OPERATIONS AND EFFECTIVELY EDUCATE THE PUBLIC, MORE SPECIFICALLY ITS TARGET MARKET, REGARDING ITS AVAILABILITY AND THE BENEFITS OF THE SITE.

EVEN IF THE LIMITED PARTNERSHIP OBTAINS ITS \$75,000,000.00 EQUITY FINANCING AND USES IT AS DESCRIBED IN THE FINANCIAL DATA, THERE CAN BE NO ASSURANCE THAT ANY OPERATIONS WILL RESULT IN THE ANTICIPATED REVENUES OR NET INCOME TO THE LIMITED PARTNERSHIP.

RESTRICTED SECURITIES, LONG TERM NATURE OF INVESTMENT AND NO PUBLIC MARKET: INVESTORS WHO PURCHASE SECURITIES IN THIS OFFERING MUST BEAR THE ECONOMIC RISK OF THE INVESTMENT FOR AN INDEFINITE PERIOD BECAUSE THE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE 1933 SECURITIES ACT OR ANY STATE LAWS, AND THEREFORE CANNOT BE SOLD IN THE PUBLIC MARKET UNLESS THEY ARE SUBSEQUENTLY REGISTERED UNDER THE 1933 SECURITIES ACT AND ANY APPLICABLE STATE LAWS OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

THE LIMITED PARTNERSHIP HAS NOT PREPARED AUDITED FINANCIAL STATEMENTS (SEE FINANCIAL DATA – "RISK FACTORS"): NO INDEPENDENT COUNSEL HAS BEEN RETAINED TO REPRESENT THE INTEREST OF THE LIMITED PARTNERS. EACH PROSPECTIVE PURCHASER SHOULD CONSULT WITH HIS OWN COUNSEL AS TO THE TERMS OF THE PARTNERSHIP AGREEMENT AND EXHIBITS THERETO, AND THEIR FINANCIAL AND TAX ADVISERS AS TO THE BUSINESS PLAN AND EXHIBITS THERETO.

## **IMMIGRATION MATTERS**

### **OVERVIEW**

THE EB-5, FIFTH EMPLOYMENT-BASED VISA PREFERENCE IS INTENDED TO ENCOURAGE THE FLOW OF CAPITAL INTO THE U.S. ECONOMY AND TO PROMOTE EMPLOYMENT OF U.S. WORKERS. TO ACCOMPLISH THESE GOALS AND SO THAT FOREIGN INVESTORS MAY OBTAIN IMMIGRATION BENEFITS FOR HAVING MADE AN INVESTMENT, THE PROGRAM MANDATES THE MINIMUM CAPITAL THAT FOREIGN INVESTORS MUST CONTRIBUTE AND IT MANDATES THAT 10 FULL-TIME JOBS MUST BE CREATED ON ACCOUNT OF EACH INVESTMENT. IN ADDITION TO THE RETURN THAT INVESTORS HOPE TO ACHIEVE ON THEIR INVESTMENT, FOREIGN INVESTORS AND THEIR QUALIFYING FAMILY MEMBERS ARE OFFERED THE PROSPECT, BUT NOT THE GUARANTEE, OF LAWFUL PERMANENT RESIDENCE IN THE UNITED STATES.

THE PHASE II JAY PEAK PROJECT HAS BEEN STRUCTURED SO THAT INVESTORS MAY MEET THE REQUIREMENTS OF THE EB-5 PROGRAM OF THE ACT AND QUALIFY UNDER THIS PROJECT TO BECOME ELIGIBLE FOR ADMISSION TO THE UNITED STATES OF AMERICA AS LAWFUL PERMANENT RESIDENTS WITH THEIR SPOUSES AND UNMARRIED, MINOR CHILDREN.

THE PROJECT HAS BEEN DESIGNED TO QUALIFY UNDER PROVISIONS IN THE LAW THAT PERMIT A REDUCED INVESTMENT AND PERMIT INDIRECT CREATION OF JOBS, A PRIVILEGE NOT GRANTED TO EB-5 PROJECTS

AFFECTED BY VARIOUS FACTORS SUCH AS ADVERSE WEATHER CONDITIONS DURING THE RESORT'S PEAK SKI AND SUMMER SEASONS.

THE PROJECT INVOLVES SUBSTANTIAL CONSTRUCTION ACTIVITY. THERE MAY BE DELAYS IN CONSTRUCTION EITHER WITHIN OR BEYOND THE CONTROL OF THE GENERAL PARTNER. ANY DELAYS MAY AFFECT THE ABILITY OF THE PROJECT TO GENERATE CASH FLOW OR MAY INCREASE COSTS AND REDUCE PROJECTED RATE OF RETURN.

SITE PLANS AND CONCEPTUALS: THE SITE PLANS AND CONCEPTUAL PICTURES WITHIN THIS OFFERING MEMORANDUM ARE NOT INTENDED AS LEGAL DESCRIPTIONS OF THE PROPERTY OR TO CONSTITUTE AN UNDERTAKING TO DEVELOP THE SUBJECT PROPERTY EXACTLY AS SHOWN HEREIN. RATHER, IT IS FOR GENERAL REFERENCE ONLY AND THE ACTUAL DETAILS SHOWN HEREIN MAY VARY SUBSTANTIALLY DEPENDING UPON ACTUAL SITE CONDITIONS AND NUMEROUS OTHER FACTORS. PLANS AND DESIGNS TO BUILD OUT THIS PROJECT AS PROPOSED ARE SUBJECT TO CHANGE WITHOUT NOTICE.

REAL ESTATE DEVELOPMENT ALWAYS INVOLVES VARIOUS ENVIRONMENTAL RISKS. THESE RISKS INCLUDE BUT ARE NOT LIMITED TO THE POSSIBLE PRESENCE OF HAZARDOUS AND TOXIC SUBSTANCES LOCATED ON, OR GENERATED BY CONSTRUCTION ACTIVITY OR OPERATIONS ON, THE PROPERTY, THE RESORT OR ADJACENT PROPERTY, WHICH COULD HAVE A DETRIMENTAL EFFECT ON THE PARTNERSHIP, AND COULD GIVE RISE TO LEGAL PROCEEDINGS BROUGHT BY CONTRACTORS, ADJACENT PROPERTY OWNERS AND OTHERS, ALL OF WHICH COULD CAUSE THE PARTNERSHIP TO SUFFER LOSS OF CAPITAL AND PROFITS, AND INCUR THE RESPONSIBILITY TO REMEDY THE ENVIRONMENTAL CONTAMINATION.

THE FINANCIAL FORECASTS CONTAIN ESTIMATES OF FUTURE RESULTS BASED ON INFORMATION AVAILABLE AS OF THE DATE OF THIS OFFERING MEMORANDUM THAT THE LIMITED PARTNERSHIP BELIEVES ARE REASONABLE. HOWEVER, NO REPRESENTATION IS OR CAN BE MADE AS TO FUTURE OPERATIONS OR OF THE AMOUNT OF ANY FUTURE INCOME OR LOSS FROM THE OPERATION OF THE HOTEL OR ANCILLARY PROJECTS.

FUTURE MARKET VALUE OF THE PROJECT: THE ECONOMY OF THE STATE OF VERMONT, OF THE UNITED STATES GENERALLY, DEMOGRAPHIC CHANGES, INTEREST RATES, TAX CHANGES, FUTURE CONSTRUCTION ACTIVITY, AND MANY OTHER FACTORS WILL DETERMINE THE FUTURE VALUE OF THE PROJECT. THERE IS NO ASSURANCE THAT THE PROJECT OR ANY SEGMENTS THEREOF WILL HOLD OR INCREASE IN VALUE.

THE SUCCESS OF THE LIMITED PARTNERSHIP WILL DEPEND ON ITS ABILITY TO ATTRACT VISITORS TO THE HOTEL AND RESORT. NO ASSURANCE CAN BE GIVEN THAT THE LIMITED PARTNERSHIP WILL BE SUCCESSFUL IN ATTRACTING SUCH GUESTS OR CUSTOMERS.

THERE IS COMPETITION AMONG EXISTING ACCOMMODATIONS AT THE RESORT AND OPERATORS OF OTHER ALL SEASONS RESORT HOTELS TO ATTRACT AND ENCOURAGE VISITS FOR CUSTOMERS. THERE CAN BE NO ASSURANCE THAT THE LIMITED PARTNERSHIP WILL BE ABLE TO COMPETE.

THE RESORT OWNER, OR ITS SUCCESSORS OR ITS AFFILIATES, MAY IN THE FUTURE DETERMINE TO CONSTRUCT OTHER BUILDINGS AT THE RESORT, INCLUDING HOTELS AND OTHER AMENITIES WHICH MAY COMPETE WITH THE HOTEL, AND OTHER AMENITIES FOR GUESTS AND CUSTOMERS.

WHILE THE GENERAL PARTNER BELIEVES THE FINANCIAL PROJECTIONS, SOURCES OF FUNDS, BUILD COSTS, TIME FRAMES AND OTHER INFORMATION WITHIN THE BUSINESS PLAN ARE BASED UPON REASONABLE ASSUMPTIONS CONCERNING CERTAIN FACTORS AFFECTING THE PROBABLE FUTURE DEVELOPMENT AND OPERATIONS OF THE PARTNERSHIP AND THE PROJECT, PURCHASERS SHOULD RECOGNIZE THAT THE FINANCIAL FORECASTS MAKE ASSUMPTIONS ABOUT GROSS REVENUES FROM THE HOTEL AND ANCILLARY PROJECTS INCLUDING BUT NOT LIMITED TO ANNUAL ROOM RATES, ADMISSION FEES, OCCUPANCY AND USAGE LEVELS, WHICH ARE SUBJECT TO SUBSTANTIAL FLUCTUATION. ALTHOUGH THE LIMITED PARTNERSHIP DOES NOT BELIEVE SUCH CHARGES AND RATES TO BE UNREASONABLE, PROSPECTIVE PURCHASERS SHOULD BE AWARE THAT THERE IS NO ASSURANCE THAT SUCH RATES AND OCCUPANCY RATES WILL BE ACHIEVED OR MAINTAINED. IF SUCH RATES, OCCUPANCY AND USAGE LEVELS ARE NOT ACHIEVED, THE OPERATING RESULTS MAY BE LESS FAVORABLE THAN THOSE PROJECTED. NO ASSURANCE CAN BE MADE THAT THESE FORECASTS WILL PROVE ACCURATE, AND PURCHASERS ARE WARNED AGAINST PLACING EXCESSIVE RELIANCE ON SUCH INFORMATION WHEN DECIDING WHETHER TO INVEST IN THE PARTNERSHIP.

CARRY A LEGEND TO THE EFFECT THAT TRANSFERS OF THE LIMITED PARTNERSHIP INTERESTS ARE PROHIBITED UNLESS IN COMPLIANCE WITH THE FOREGOING. THE LIMITED PARTNERSHIP WILL REFUSE TO REGISTER A TRANSFER NOT MADE IN ACCORDANCE WITH REGULATION D OR REGULATION S AND ANY APPLICABLE STATE LAWS, UNLESS THE TRANSFER IS MADE AFTER REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND ANY APPLICABLE STATE LAWS OR IS OTHERWISE EXEMPT FROM REGISTRATION. THESE RESTRICTIONS MAY RENDER IT DIFFICULT OR IMPOSSIBLE TO LOCATE A PROSPECTIVE PURCHASER IF AND WHEN AN OWNER WISHES TO SELL HIS LIMITED PARTNERSHIP INTEREST.

THERE IS NO PUBLIC MARKET FOR THE SALE AND PURCHASE OF THE LIMITED PARTNERSHIP INTERESTS. THESE INTERESTS ARE NOT READILY TRANSFERABLE. THERE ARE RESTRICTIONS ON THE SALE OF THE LIMITED PARTNERSHIP INTERESTS. THERE MAY BE NO MARKET FOR RESALE OF THESE LIMITED PARTNERSHIP INTERESTS. THERE CAN BE NO ASSURANCES THAT A PURCHASER CAN BE FOUND IF AND WHEN AN OWNER WISHES TO SELL HIS INTEREST. A PURCHASER MAY NEVER BE ABLE TO LIQUIDATE HIS INVESTMENT IN THE LIMITED PARTNERSHIP.

THE LIMITED PARTNERSHIP IS A LIMITED PARTNERSHIP CREATED PURSUANT TO VERMONT LAW. THE RIGHTS OF LIMITED PARTNERS IN A LIMITED PARTNERSHIP DIFFER MATERIALLY FROM THE RIGHTS OF PARTNERS IN A GENERAL PARTNERSHIP OR SHAREHOLDERS IN CORPORATIONS.

THE PARTNERSHIP'S INVESTMENT IN THE PROJECT WILL BE SUBJECT TO THE RISKS RELATED TO, AND FORMING A PART OF, THE OWNERSHIP OF REAL PROPERTY. THESE INCLUDE BUT ARE NOT LIMITED TO UNCERTAINTY OF CASH FLOW TO MEET FIXED OBLIGATIONS; ADVERSE CHANGES IN GENERAL OR LOCAL ECONOMIC CONDITIONS; CHANGES IN GOVERNMENTAL RULES AND OR FISCAL POLICIES; ADVERSE ECONOMIC CONDITIONS; ADVERSE CHANGES IN INTEREST RATES AND TAXES; EXCESSIVE BUILDING RESULTING IN AN OVER SUPPLY; REDUCTION IN THE COST OF OPERATING COMPETING PROPERTIES; RELATIVE APPEAL OF COMPETING PROPERTIES; COMPETING DEVELOPMENTS WITHIN THE VICINITY IN A SIMILAR INDUSTRY, REDUCED DEMAND FOR PROPERTIES IN THE AREA, AND OTHER FACTORS REFERENCED ELSEWHERE WITHIN THE RISK FACTORS, MANY IF NOT ALL OF WHICH ARE BEYOND THE CONTROL OF THE LIMITED PARTNERSHIP AND THE GENERAL PARTNER.

THE GENERAL PARTNER OF THE LIMITED PARTNERSHIP WILL HAVE CERTAIN POWERS AND RIGHTS NOT GRANTED TO THE OWNERS OF THE LIMITED PARTNERSHIP INTERESTS.

WHETHER THE LIMITED PARTNERSHIP CAN MAKE DISTRIBUTIONS TO THE LIMITED PARTNERS IS DEPENDENT ON MARKET CONDITIONS FOR RESORT VISITATIONS, RENTALS, OCCUPANCY, OPERATING COSTS, PARTNERSHIP EXPENSES, AND NUMEROUS OTHER FACTORS, WHICH AFFECT ITS ABILITY TO EARN A SUFFICIENT INCOME IN EACH YEAR, ALL OF WHICH IN TURN AFFECT THE GENERAL PARTNER'S DETERMINATION WHETHER OR TO WHAT EXTENT DISTRIBUTIONS SHOULD BE MADE. THERE IS NO ASSURANCE THAT CASH FROM OPERATIONS WILL BE AVAILABLE FOR DISTRIBUTION TO LIMITED PARTNERS.

JAY PEAK MANAGEMENT INC. OR ITS DESIGNEE WILL PROVIDE THE MANAGEMENT FOR THE HOTEL AND ANCILLARY PROJECTS AND RELATED AMENITIES. IF JAY PEAK MANAGEMENT INC. OR ITS AFFILIATE ELECTS TO CEASE BEING THE GENERAL PARTNER, IT MAY BE DIFFICULT TO FIND A REPLACEMENT.

INSURANCE: CERTAIN RISKS RELATED TO THE PROJECT MAY NOT BE INSURABLE SUCH AS, BUT NOT LIMITED TO, EXTREME WEATHER, TERRORISM AND ACTS OF GOD. IF AN UNINSURABLE LOSS OCCURS THE PARTNERSHIP COULD SUFFER LOSS OF CAPITAL AND PROFITS.

DEPENDANCE ON KEY PERSONNEL: THE LIMITED PARTNERSHIP WILL RELY ON THE ACTIVE PARTICIPATION OF WILLIAM STENGER, AN OFFICER OF THE GENERAL PARTNER JAY PEAK MANAGEMENT INC. MR. STENGER HAS BEEN INVOLVED IN THE JAY PEAK EXPANSION PROJECT AND THE OPERATION OF THE RESORT FOR MANY YEARS. THE LOSS OF MR STENGER'S SERVICES COULD CREATE A SIGNIFICANT ADVERSE EFFECT ON THE LIMITED PARTNERSHIP.

WHETHER THE LIMITED PARTNERSHIP'S ACTIVITIES CAN BE PROFITABLE WILL DEPEND, AT LEAST IN PART, ON THE INTEGRATION AND COORDINATION OF ITS BUSINESS WITH THE OTHER BUSINESSES OPERATED AT THE JAY PEAK RESORT, INCLUDING THE BUSINESSES SITUATED IN SPACE TO BE BUILT OUT BY THE RESORT OWNER WITHIN BUILDINGS ERECTED BY THE LIMITED PARTNERSHIP. THE FINANCIAL FORECASTS ARE BASED, IN PART, ON ASSUMPTIONS CONCERNING FACTORS OVER WHICH THE PURCHASERS AND THE LIMITED PARTNERSHIP WILL HAVE NO CONTROL, INCLUDING OCCUPANCY RATES FOR THE HOTEL WHICH MAY BE ADVERSELY

SUBSEQUENT SALE OF THE LIMITED PARTNERSHIP INTERESTS ARE RESTRICTED TO BUYERS WHO QUALIFY AS "ACCREDITED INVESTORS," AS DESCRIBED IN RULE 501 OF THE SECURITIES AND EXCHANGE COMMISSION OR WHOSE PURCHASE OTHERWISE WILL NOT REQUIRE REGISTRATION OF THE LIMITED PARTNERSHIP INTERESTS. THERE ARE ADDITIONAL MATTERS CONCERNING TRANSFER RESTRICTIONS UNDER THE TERMS OF THE LIMITED PARTNERSHIP AGREEMENT, AND ALL PURCHASERS SHOULD REVIEW ARTICLE 10 OF THE SAID AGREEMENT FOR SPECIFIC RESTRICTIONS. CERTIFICATES EVIDENCING THE LIMITED PARTNERSHIP INTERESTS WILL BEAR A LEGEND DESCRIBING THE TRANSFER RESTRICTIONS.

## **EXIT STRATEGIES**

THE HOTEL BUILDING WILL, FROM COMMENCEMENT OF CONSTRUCTION, TAKE AN ESTIMATED 18-24 MONTHS TO CONSTRUCT, BEFORE THE HOTEL MAY COMMENCE OPERATIONS. BEGINNING IN THE FOURTH QUARTER OF 2013, OR ONCE ALL CONDITIONS ON LAWFUL PERMANENT RESIDENCE HAVE BEEN REMOVED FOR ALL FOREIGN INVESTORS UNDER THE EB-5 PROGRAM, FOR ALL QUALIFIED INVESTORS WHO HAVE INVESTED INTO THE PARTNERSHIP, WHICHEVER IS LATER, THE GENERAL PARTNER SHALL REVIEW MARKET CONDITIONS TO DETERMINE IF AND WHEN IT IS APPROPRIATE TO MARKET THE HOTEL AND, IF SO, TO DECIDE UPON A PLAN OF DISPOSITION OF THE HOTEL (WHICH MAY, BUT NEED NOT, INCLUDE THE SALE OF FRACTIONAL INTERESTS, SUBDIVISION OF THE HOTEL INTO SEPARATE CONDOMINIUMS OR OTHER COMMON INTEREST OWNERSHIP, AND SALE, OR REDEMPTION BY THE PARTNERSHIP, OF LIMITED PARTNER INTERESTS), TO BE MANAGED AND CONDUCTED EXCLUSIVELY BY THE GENERAL PARTNER OR ITS DESIGNEE ON TERMS TO BE DETERMINED BY THE GENERAL PARTNER IN ITS SOLE DISCRETION. THE GENERAL PARTNER OR ITS DESIGNEE SHALL HAVE EXCLUSIVE RIGHTS OF SALE, IN THE EVENT THE HOTEL CONDOMINIUM IS PLACED ON THE MARKET. THE GENERAL PARTNER WILL AS A CONDITION OF THE SALE REQUIRE THE PURCHASER(S) TO MAKE THEIR PURCHASED PROPERTY INTERESTS AVAILABLE TO COMMERCIALY REASONABLE, ON-GOING HOTEL OPERATIONS TO ASSIST IN MAINTAINING PERMANENT EMPLOYMENT CREATED BY THIS PROJECT, AND THE GENERAL PARTNER OR ITS DESIGNEE WILL CONTINUE TO MANAGE THE HOTEL ON TERMS, INCLUDING TERMS OF COMPENSATION, SUBSTANTIALLY SIMILAR TO THOSE CONTAINED IN THE LIMITED PARTNERSHIP AGREEMENT.

THE TIME OF THE SALE OF THE HOTEL TO THE MARKET WILL BE DETERMINED BY THE GENERAL PARTNER AND ITS PARENT COMPANY OR AFFILIATES, WHICH WILL ACCOUNT FOR, AMONG OTHER FACTORS, THE MARKET CONDITIONS AT THE TIME AND THE BUSINESS STATUS OF THE HOTEL'S OPERATIONS. THE GENERAL PARTNER WILL NOT ENGAGE IN ANY SALES CONTRARY TO THE PURPOSES OF THE INVESTMENT IN THE LIMITED PARTNERSHIP SET FORTH HEREIN OR WITHIN THE LIMITED PARTNERSHIP AGREEMENT.

## **RISK FACTORS (ALSO SEE IMMIGRATION RISK FACTORS)**

THE LIMITED PARTNERSHIP INTERESTS DESCRIBED IN THIS OFFERING MEMORANDUM INVOLVE A DEGREE OF RISK. AMONG THE RISK FACTORS THAT A PROSPECTIVE PURCHASER SHOULD CAREFULLY CONSIDER ARE THE FOLLOWING (THIS LIST IS NOT EXHAUSTIVE):

PURCHASE OF THE LIMITED PARTNERSHIP INTERESTS IS LIMITED TO THOSE WHO HAVE ATTAINED THE AGE OF AT LEAST 18 YEARS AND ALL OF WHOM MUST PURCHASE FOR INVESTMENT AND NOT WITH A VIEW TO RESALE. A DECLARATION, REPRESENTATION AND COVENANT TO THIS EFFECT ARE REQUIRED TO BE MADE IN THE SUBSCRIPTION AGREEMENT.

THE LIMITED PARTNERSHIP INTERESTS WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER ANY STATE LAWS AND, IN OFFERING THEM, THE LIMITED PARTNERSHIP WILL RELY ON ONE OR MORE EXEMPTIONS FROM REGISTRATION.

THERE WILL BE RESTRICTIONS ON THE ABILITY OF A PURCHASER TO SELL HIS LIMITED PARTNERSHIP INTEREST. NO RESALE CAN OCCUR WITHIN ONE YEAR FROM THE DATE OF THE FIRST OFFER. ANY RESALE MUST BE MADE PURSUANT TO REGULATION S OR REGULATION D AS IS APPLICABLE AFTER REGISTRATION OF THE LIMITED PARTNERSHIP INTERESTS PURSUANT TO THE SECURITIES ACT OF 1933 AND ANY APPLICABLE STATE LAWS OR PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS. MEMBERSHIP CERTIFICATES WILL

## **OFFERING MEMORANDUM ONLY AVAILABLE IN US ENGLISH LANGUAGE**

IN THE EVENT THE PROSPECTIVE PURCHASER CANNOT UNDERSTAND OR READ THE ENGLISH LANGUAGE, AND/OR IS UNABLE TO FULLY COMPREHEND ALL DOCUMENTS AND EXHIBITS RELATED TO THIS OFFERING, IT IS THE PROSPECTIVE PURCHASER'S SOLE RESPONSIBILITY AT THE PURCHASER'S SOLE COST TO OBTAIN ALL ASSISTANCE REQUIRED WITH INTERPRETATION AND TRANSLATION OF THIS OFFERING MEMORANDUM AND EXHIBITS THERETO.

## **FEDERAL TAX CONSIDERATIONS**

INVESTMENT IN THE PARTNERSHIP INVOLVES SUBSTANTIAL TAX RISKS: STATE AND FEDERAL LEGISLATURES MAY CHANGE INCOME TAX LAWS, ALTER AND CHANGE ALLOWABLE DEDUCTIONS THAT MAY BE TAKEN BY THE PARTNERSHIP AND REDUCE ITS INCOME, AND MAY CHANGE TAX RATES THAT MAY BE LESS BENEFICIAL TO PARTNERS.

OTHER TAX RISKS TO THE LIMITED PARTNERSHIP INCLUDE BUT ARE NOT LIMITED TO THE ALLOCATION OF PURCHASE PRICE OF ASSETS, TAX ITEMS, PROFITS AND BENEFITS OR OTHERWISE OF PASSIVE LOSSES, RISK OF AUDIT, LOSS OF LIMITED PARTNERSHIP STATUS AND TERMINATION OF PARTNERSHIP. THE PARTNERSHIP MUST MEET CERTAIN CRITERIA TO MAINTAIN LIMITED LIABILITY AND AVOID BEING TAXED AS A CORPORATION. THE LIMITED PARTNERSHIP MAY INCUR LEGAL, ACCOUNTING OR OTHER COSTS RESULTING FROM TAX AUTHORITY REVIEW OF THESE MATTERS, WHICH MAY RESULT IN LESS FAVORABLE TAX RATES AND OTHER COSTS.

THE RULES GOVERNING THE UNITED STATES INCOME TAXATION OF LAWFUL PERMANENT RESIDENTS ARE COMPLEX. PRIOR TO INVESTMENT, AN INVESTOR SHOULD CONSULT WITH HIS U.S. TAX ADVISORS AND, IF THE INVESTOR IS FOREIGN, BOTH HIS OVERSEAS AND US TAX ADVISORS, WITH REGARD TO THE TAX CONSEQUENCES OF BECOMING A LAWFUL PERMANENT RESIDENT OF THE UNITED STATES, AND FURTHER TO INVESTING IN, OWNING AND DISPOSING OF THE LIMITED PARTNERSHIP INTERESTS DESCRIBED IN THIS OFFERING MEMORANDUM, AND ALL OTHER TAX CONSEQUENCES IN CONNECTION WITH THE PARTNERSHIP AND THIS PROJECT. THE PARTNERSHIP HAS NOT OBTAINED A LEGAL OPINION OR RULING FROM ANY TAX AUTHORITY REGARDING ANY ASPECTS OF THE PARTNERSHIP OR ITS BUSINESS.

TAX INFORMATION AND TAX RISKS DESCRIBED IN THIS OFFERING MEMORANDUM ARE NOT TAX ADVICE TO THE SUBSCRIBER. EACH SUBSCRIBER MUST RELY SOLELY AND ONLY UPON THEIR OWN TAX ADVISOR(S).

## **TRANSFER RESTRICTIONS**

THE OFFERING OF THE LIMITED PARTNERSHIP INTERESTS HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE SECURITIES ACT OF 1933 OR ANY APPLICABLE STATE SECURITIES LAWS, THE OFFERING IS RESTRICTED TO A LIMITED NUMBER OF INDIVIDUALS WHO ARE EITHER US CITIZENS, CURRENT U.S. LAWFUL PERMANENT RESIDENTS, OR FOREIGN INVESTORS RESIDENT AND LIVING IN THE UNITED STATES IN VALID IMMIGRATION STATUS, THEREBY CAUSING REGULATION D OF THE ACT TO APPLY IN CONNECTION WITH A PURCHASE, OR FOREIGN INVESTORS WITHOUT VALID IMMIGRATION STATUS WHO MUST REPRESENT TO THE LIMITED PARTNERSHIP THAT THEY ARE NOT RESIDENT IN THE UNITED STATES AT THE TIME OF THE OFFER, WILL NOT BE RESIDENT IN THE UNITED STATES AT THE TIME OF THE SALE, AND ARE NOT ACQUIRING THE LIMITED PARTNERSHIP INTEREST FOR THE BENEFIT OF A UNITED STATES PERSON, AS THAT TERM IS DEFINED IN REGULATION S. THE INVESTOR UNDERSTANDS THAT HE OR SHE MAY NOT OFFER TO SELL, OR SELL, A LIMITED PARTNERSHIP INTEREST UNLESS IT IS REGISTERED UNDER THE SECURITIES ACT OF 1933 AND ANY APPLICABLE STATE SECURITIES REGULATIONS OR AN EXEMPTION IS AVAILABLE FROM THE REGISTRATION REQUIREMENTS, AND THAT THE INVESTOR'S WEALTH OR INCOME QUALIFY HIM OR HER AS A SUITABLE PURCHASER.

TO PRESERVE THE EXEMPTIONS FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAWS, PURSUANT TO WHICH EXEMPTIONS PURCHASE OF THE LIMITED PARTNERSHIP INTERESTS ARE BEING OFFERED,

## USE OF PROCEEDS

THE NET PROCEEDS FROM THE SALE OF THE LIMITED PARTNERSHIP INTERESTS WILL BE APPLIED (1) TO THE COSTS OF LAND ACQUISITION, PLANNING AND OBTAINING PERMITS FOR AND CONSTRUCTION OF A MULTI-STOREY BUILDING, AND AN ADMINISTRATION BUILDING AND GROCERY STORE WHICH TOGETHER WILL COMPRISE A THREE-UNIT CONDOMINIUM ASSOCIATION TO INCORPORATE IN PART A NEW HOTEL COMPRISING A MIX OF 120 (ONE HUNDRED AND TWENTY) ONE, TWO AND THREE BEDROOM HOTEL SUITES OWNED AND OPERATED BY JAY PEAK HOTEL SUITES PHASE II L.P. AND (2) TO THE COSTS OF BUILDING THE ANCILLARY PROJECTS COMPRISING THE INDOOR WATER PARK, GOLF CLUBHOUSE, INDOOR ICE ARENA AND BOWLING CENTER, THESE PROJECTS TO BE LEASED AT NOMINAL CONSIDERATION TO THE LIMITED PARTNERSHIP. ANY FUNDS NOT REQUIRED FOR THESE PURPOSES WILL BECOME WORKING CAPITAL FOR THE LIMITED PARTNERSHIP'S OPERATIONS AND ACTIVITIES. WITHIN THE BUILDING THE LIMITED PARTNERSHIP WILL CONVEY A CONDOMINIUM UNIT IN SHELL FORM TO THE RESORT OWNER, WHO WILL OWN AND WILL BUILD-OUT AT ITS OWN COST, TO PROVIDE ADDITIONAL GUEST SERVICES, RETAIL, RECREATION FACILITIES, INTERNATIONAL SPA AND CONVENTION CENTER. THE REMAINING CONDOMINIUM UNIT COMPRISING AN ADMINISTRATION UNIT AND GROCERY STORE WILL ALSO BE CONVEYED TO THE RESORT OWNER WHO WILL BUILD-OUT AT ITS OWN COST.

## LAND ACQUISITION

THE LIMITED PARTNERSHIP WILL PURCHASE THE LAND NECESSARY TO CONSTRUCT THE HOTEL AND ADMINISTRATIVE BUILDING FROM THE RESORT OWNER AT JAY PEAK RESORT IN JAY, VERMONT. THE RESORT OWNER WILL GRANT THE LIMITED PARTNERSHIP A WARRANTY DEED TO THE LAND, WARRANTING MARKETABLE TITLE FREE FROM ALL LIENS OR ENCUMBRANCES OTHER THAN PERMITTED ENCUMBRANCES SUCH AS CERTAIN CROSS-EASEMENTS THAT BENEFIT AND BURDEN THE LAND, WHICH ENCUMBRANCES SHALL NOT IMPAIR THE LIMITED PARTNERSHIP'S ABILITY TO CONSTRUCT THE HOTEL BUILDING, ADMINISTRATIVE BUILDING AND ANY ADDITIONAL NECESSARY IMPROVEMENTS AND OPERATE THE HOTEL. CERTAIN MORTGAGES ENCUMBERING THE LAND WILL NEED TO BE PARTIALLY DISCHARGED IN CONNECTION WITH THE PURCHASE OF THE LAND. AT THE SOLE OPTION OF THE RESORT OWNER, THE SALE OF THE LAND MAY BE STRUCTURED AS AN INSTALLMENT SALE, STAGED PURCHASE OR UNDER SOME OTHER ARRANGEMENT SATISFACTORY TO THE RESORT OWNER THAT DOES NOT DELAY THE ABILITY OF THE LIMITED PARTNERSHIP TO CONSTRUCT THE BUILDINGS. IN ADDITION, THE SALE OF THE LAND MAY REQUIRE THE ISSUANCE OF LOCAL AND STATE SUBDIVISION OR OTHER PERMITS, TO BE APPLIED FOR AND OBTAINED BY THE RESORT OWNER.

## THE CONDOMINIUM ASSOCIATION

THE LIMITED PARTNERSHIP, IN ITS ROLE AS THE DECLARANT OF THE CONDOMINIUM REGIME TO BE KNOWN AS JAY PEAK HOTEL SUITES PHASE II, WILL FORM A VERMONT NONPROFIT CORPORATION TO BE KNOWN AS JAY PEAK HOTEL SUITES PHASE II OWNERS ASSOCIATION INC. (THE "COA"). THE COA WILL COMPRISE THREE CONDOMINIUM UNITS AND BE MADE UP OF THE LIMITED PARTNERSHIP, AS THE OWNER OF THE HOTEL UNIT, AND THE RESORT OWNER, WHICH WILL OWN THE OTHER TWO CONDOMINIUM UNITS. THE COA WILL ENTER INTO A MANAGEMENT AGREEMENT WITH JAY PEAK, INC. OR AN AFFILIATED COMPANY TO MANAGE THE COA.

## COMPLETION OF PROJECT

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN THE EVENT THAT THE RESORT OWNER OR AN AFFILIATE INVESTS FUNDS OR MAKES FINANCIAL COMMITMENTS OTHER THAN SECURED DEBT (AS DEFINED IN THE LIMITED PARTNERSHIP AGREEMENT) TO COMPLETE THE PROJECT, THE RESORT OWNER OR ITS AFFILIATE WILL BE ISSUED INTERESTS PRO RATA IN THE PARTNERSHIP FOR NO ADDITIONAL CONSIDERATION AND THEREAFTER HOLD ITS INTEREST(S) SUBJECT TO THE TERMS OF THE LIMITED PARTNERSHIP AGREEMENT.

## RELATED CONCURRENT DEVELOPMENT OF SECOND HOMES BY RESORT OWNER

AS A DIRECT RESULT OF THE EXTENSIVE ANCILLARY PROJECTS AND ADDITIONAL RESORT FACILITIES GENERATED BY THIS OFFERING, IT IS PROJECTED THAT JAY PEAK, INC. WILL DEVELOP AT ITS OWN COST AN AVERAGE OF 48 NEW CONDOMINIUM HOMES ANNUALLY WITHIN THE RESORT OVER THE NEXT TEN TO TWELVE YEARS, WHICH WILL ALSO ADD CONSIDERABLY TO THE NUMBER OF VISITORS AND SPENDING AT THE RESORT. THERE ARE APPROXIMATELY 150 ACRES RESERVED FOR THIS PROJECT. JAY PEAK, INC. WILL BE THE GENERAL CONTRACTOR FOR ALL SECOND HOME DEVELOPMENT, EMPLOYING IN EXCESS OF 200 TRADESPERSONS AND CONSTRUCTION SUPPORT PERSONNEL AND OTHER SPECIALISTS. IN ADDITION TO BUILDING THE SECOND HOMES, JAY PEAK INC. SELLS, MANAGES AND MAINTAINS ALL REAL ESTATE AT THE RESORT. THESE PERMANENT NEW CONSTRUCTION JOBS CREATED ARE REFERENCED IN THE ECONOMIC REPORT, ARE CLASSIFIED UNDER INDIRECT EMPLOYMENT AND ARE APPLIED AS APPROPRIATE TO THE JOB CREATION REQUIREMENT AND BENEFIT OF FOREIGN INVESTORS.

## JAY PEAK MARKET REVIEW

WITH JAY PEAK'S DEVELOPMENTAL PHILOSOPHY CORNERSTONED ON AN ENVIRONMENTAL FRAMEWORK, FUTURE MARKET DEVELOPMENT WILL BE ENHANCED AS JAY'S POSITIONING AND PHYSICAL CHARACTERISTICS PROVIDE SUBSTANTIAL ADVANTAGES OVER OLDER, LESS ENVIRONMENTALLY SENSITIVE FACILITIES. WINTER BUSINESS WILL CONTINUE TO FOCUS ON SKIING AND THE SKI VACATION PRODUCT. FAMILY SKI VACATIONS, SKI CLUB OUTINGS AND INDIVIDUAL AND COUPLES' BUSINESS WILL PROVIDE THE FRAMEWORK FOR WINTER BUSINESS DEVELOPMENT. ACCENTUATING THE TWO AND THREE DAY WEEKEND STAY, AND THE THREE, FIVE, AND SEVEN-DAY SKI WEEK EXPERIENCE WILL BE THE PRIMARY FOCUS OF THE RESORT'S WINTER MARKETING EFFORTS. THE RESORT'S MARKETS FOR WINTER ACTIVITY AND HOTEL UTILIZATION WILL BE EASTERN CANADA, ALL OF NEW ENGLAND AND THE MID-ATLANTIC STATES OF THE UNITED STATES. FURTHER DESTINATION MARKETS SUCH AS THE MID-SOUTH AND FLORIDA ARE VIABLE THROUGH AIRLINE CONNECTIONS INTO THE BURLINGTON, VERMONT AIRPORT AND THE PIERRE ELLIOT TRUDEAU (DORVAL) AIRPORT SERVING MONTRÉAL, QUÉBEC, CANADA. SUMMER BUSINESS DEVELOPMENT WILL LARGELY FOCUS ON FAMILY VACATIONS INVOLVING ACTIVE, OUTDOOR AND ENVIRONMENTALLY BALANCED EXPERIENCES. WITH SUCH A UNIQUE AND UNSPOILED SETTING, JAY PEAK CAN PROVIDE IT'S VACATIONING PUBLIC AN OPPORTUNITY TO HIKE, BIKE, FISH, SAIL AND SIGHTSEE IN OR NEAR THE RESORT IN A SETTING THAT IS TRULY UNDEVELOPED. NATURE TRAILS ALONG PRISTINE MOUNTAIN STREAMS WILL PROVIDE THE MOST NATURAL OF SETTINGS FOR FAMILY OUTINGS. GOLF, TENNIS AND OTHER TYPICAL RECREATION ENJOYED IN SUMMER WILL ALSO BE ON THE RESORT PREMISES, BUT EVERYTHING FROM SIGNAGE TO LIGHTING TO PROGRAM DESIGN WILL EMIT AN ENVIRONMENTAL SENSITIVITY THAT WILL, ONCE AGAIN, DIFFERENTIATE JAY PEAK FROM OTHER RESORTS THAT HAVE LARGELY BEEN BUILT ON A LEGACY OF RAPID EXPANSION IN THE 1970'S AND 1980'S.

ALTHOUGH JAY PEAK ALREADY HAS A VERY SUCCESSFUL SKI RESORT, MANY TIMES, EVEN IN PEAK SEASON, POOR WEATHER WILL RESULT IN TRIPS, VACATIONS AND MEETINGS BEING CANCELLED. THE RESORT SOUGHT OPPORTUNITIES THAT WOULD HELP EXPAND INTO A YEAR-ROUND DESTINATION, INSULATE THE RESORT FROM THE IMPACT OF WEATHER, CREATE WEATHER-PROOF VACATIONS, CAPTURE YEAR-ROUND REVENUES, YET ALLOW THE FREEDOM TO THE RESORT TO CONTINUE TO DO WHAT IT HAS DONE SO WELL FOR THE LAST 50 YEARS. WITH THE COMPLETION OF PHASE II, JAY PEAK RESORT WILL TRULY BE A "DESTINATION RESORT" WITH A 12 MONTH VENUE.

WITH THE ADVENT OF PHASE II, THE GENERAL PARTNER BELIEVES THE NEW ANCILLARY FACILITIES SUCH AS THE INDOOR WATER PARK, ICE ARENA, SPA , AND CONVENTION CENTER WILL LIKELY HELP FILL ROOMS MOST WEEKENDS ALL YEAR LONG AND SCHOOL BREAK PERIODS DURING THE YEAR. HOTELS/RESORTS WITH AN INDOOR WATER PARK ARE REPORTEDLY ABLE TO EXTEND THEIR PEAK SEASONS FROM ABOUT 100 DAYS TO ABOUT 300 DAYS OR MORE.

REASONABLE NOTICE, BUT SHALL NOT INCUR ANY UNREASONABLE EXPENSES, TO PROVIDE ANY OTHER DOCUMENTS OR INFORMATION AVAILABLE TO THE LIMITED PARTNERSHIP CONCERNING THE AFFAIRS OF THE LIMITED PARTNERSHIP WHICH A PROSPECTIVE INVESTOR REQUESTS, SUBJECT TO RECEIPT OF REASONABLE ASSURANCES THAT SUCH MATTERS WILL BE MAINTAINED IN CONFIDENCE BETWEEN THE INVESTOR AND ITS PROFESSIONAL ADVISORS.

## THE LIMITED PARTNERSHIP

JAY PEAK HOTEL SUITES PHASE II L.P. IS A NEWLY FORMED VERMONT LIMITED PARTNERSHIP WITH ITS PRINCIPAL PLACE OF BUSINESS IN JAY, VERMONT. THE GENERAL PARTNER IS JAY PEAK MANAGEMENT INC., A VERMONT CORPORATION.

## THE GENERAL PARTNER

JAY PEAK MANAGEMENT INC. IS A VERMONT CORPORATION WITH ITS PRINCIPAL PLACE OF BUSINESS IN JAY, VERMONT (THE "GENERAL PARTNER"). THE GENERAL PARTNER IS A WHOLLY OWNED SUBSIDIARY OF JAY PEAK, INC., AND WILL BE RESPONSIBLE FOR SOLICITING LIMITED PARTNERS, FOR THE DAY TO DAY DECISIONS ON BEHALF OF THE LIMITED PARTNERSHIP AND FOR MANAGING THE CONSTRUCTION OF THE NEW BUILDINGS AND ANY OTHER NECESSARY IMPROVEMENTS, INCLUDING APPLYING FOR AND OBTAINING ANY REQUIRED DEVELOPMENT AND CONSTRUCTION PERMITS. IN ADDITION, THE GENERAL PARTNER WILL BE RESPONSIBLE FOR OPERATING THE HOTEL AND ANCILLARY PROJECTS EITHER DIRECTLY OR THROUGH A CONTRACTED DESIGNEE. WILLIAM STENGER IS PRESIDENT OF BOTH JAY PEAK INC. AND THE GENERAL PARTNER.

## PROJECT SUMMARY

THE PROJECTED OVERALL COST OF THE JAY PEAK PHASE II PROJECT IS \$87,000,000, OF WHICH \$75.0 MILLION OF DEVELOPMENT COSTS WILL BE FINANCED PURSUANT TO THIS OFFERING MEMORANDUM, WITH THE BALANCE OF FUNDS OR VALUE OF \$12.0 MILLION PROVIDED BY THE RESORT OWNER (SEE BUSINESS PLAN SECTION 2). WITHIN THE HOTEL BUILDING THE RESORT OWNER WILL OWN THE HOTEL BUILDING RESORT OWNER UNIT AND, AT ITS OWN COST, BUILD OUT AND OPERATE ADDITIONAL GUEST FACILITIES EXPECTED TO INCLUDE A SPA, CONFERENCE CENTER, RETAIL AND RESTAURANT FACILITIES, FOR THE ESTIMATED BUILD OUT COST OF \$3,250,000 (SEE BUSINESS PLAN; SOURCE OF FUNDS); AND, THE RESORT OWNER WILL OWN, AND AT ITS OWN COST, BUILD OUT THE ADMINISTRATIVE OFFICES BUILDING, EXPECTED TO HOUSE ITS ADMINISTRATIVE OFFICES, A GROCERY AND DELI, AT THE PROJECTED COST OF BUILD OUT OF \$1,575,000 (SEE BUSINESS PLAN; SOURCE OF FUNDS); AND, THE RESORT OWNER SHALL CONTRIBUTE \$3,600,000 AS A CREDIT AGAINST THE PURCHASE PRICE OF THE LAND ON WHICH THE HOTEL BUILDING AND THE ADMINISTRATIVE OFFICES BUILDING WILL BE BUILT (SEE LIMITED PARTNERSHIP AGREEMENT 5.01(B) (XIV)); AND, THE RESORT OWNER, AT ITS OWN COST, WILL PAY THE CONSTRUCTION SUPERVISION COSTS OF THE ANCILLARY PROJECTS, PROJECTED AT \$3,443,514 (SEE BUSINESS PLAN - SOURCE OF FUNDS).

ALL QUALITY RESORT FACILITIES HAVE A CENTRAL COMMERCIAL ZONE AT THEIR CORE. FROM THIS NUCLEUS, VARYING AMENITIES AND RECREATIONAL FACILITIES EMANATE. AT JAY PEAK SKI RESORT, THE CONSTRUCTION OF A SECOND SUITE HOTEL OF 120 UNITS WILL SERVE TO STRENGTHEN THE CORE OF THE JAY PEAK VILLAGE. ONE, TWO AND THREE BEDROOM SUITES WILL MAKE UP THE SUITE HOTEL MIX. EACH ROOM OR SUITE WILL HAVE A VIEW OF THE MOUNTAIN OR THE VALLEY. SINCE CONNECTION WITH THE ENVIRONMENT IS SO IMPORTANT TO THE JAY PEAK THEME, THE GUEST MUST BE ABLE TO SEE THE SETTING THAT THEY ARE VISITING. BECAUSE THE HOTEL IS LOCATED AT THE BASE OF THE AERIAL TRAM IN THE CENTER OF THE RESORT, OCCUPANCY IS EXPECTED TO BE VERY HIGH. THE HOTEL FACILITY WILL ALSO INCLUDE COMMERCIAL RESOURCES TO BE OWNED AND OPERATED BY THE RESORT OWNER AND ITS AFFILIATES, TOGETHER WITH ANCILLARY PROJECTS INCLUDING THE INDOOR WATER PARK, GOLF CLUBHOUSE, INDOOR ICE RINK, AND BOWLING ALLEY TO BE OPERATED BY THE PARTNERSHIP. SEE COMPREHENSIVE BUSINESS PLAN: SECTION 2. THE COMMERCIAL CORE WILL MAKE THE RESORT A TRULY ONE-STOP DESTINATION RESORT AND CATER TO THE NEEDS OF HOTEL SUITE GUESTS AND THE MANY OTHER GUESTS AT JAY PEAK WHO STAY IN OTHER ACCOMMODATIONS ON SITE AT THE RESORT. THE HOTEL WILL ATTRACT ADDITIONAL GUESTS DURING THE NON-SKI SEASON, AS WELL AS BROADEN THE ACTIVITIES FOR THE SKI AND GOLF CLIENTELE OF THE RESORT.



## **SUMMARY OF THE OFFERING**

### **INTRODUCTION**

THIS SUMMARY HIGHLIGHTS AND OUTLINES CERTAIN INFORMATION REGARDING THE OFFERING AND MAY NOT CONTAIN ALL THE INFORMATION THAT IS IMPORTANT TO YOU. THE SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE INFORMATION APPEARING IN THE LIMITED PARTNERSHIP AGREEMENT, AND ELSEWHERE IN THIS MEMORANDUM, INCLUDING THE EXHIBITS AND THE FINANCIAL DATA OF THE LIMITED PARTNERSHIP ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE (THE "FINANCIAL DATA") WHICH CONTAINS MORE DETAILED INFORMATION WITH RESPECT TO EACH OF THE MATTERS SUMMARIZED HEREIN AS WELL AS OTHER MATTERS NOT COVERED BY THIS SUMMARY. PROSPECTIVE INVESTORS SHOULD READ THE MEMORANDUM AND THE FINANCIAL DATA IN THEIR ENTIRETY, ALONG WITH THE LIMITED PARTNERSHIP AGREEMENT, THE SUBSCRIPTION AGREEMENT AND ACCOMPANYING DOCUMENTS AND EXHIBITS.

### **SECURITIES BEING OFFERED**

INVESTORS ARE BEING OFFERED THE OPPORTUNITY TO PURCHASE A LIMITED PARTNERSHIP INTEREST. ALL LIMITED PARTNERSHIP INTERESTS ARE PAYABLE IN FULL UPON SUBSCRIPTION (THE "OFFERING"). THERE IS NO MINIMUM SALE REQUIREMENT. IN ACCORD WITH THE PROVISIONS OF THE LIMITED PARTNERSHIP AGREEMENT, EXCEPTING FOR FOREIGN INVESTORS SEEKING QUALIFICATION AS AN "ALIEN ENTREPRENEUR", WHERE THE MINIMUM AMOUNT, CURRENTLY \$500,000, IS SET BY LAW, THE GENERAL PARTNER MAY IN ITS SOLE DISCRETION BOTH WAIVE THE MINIMUM SUBSCRIPTION AMOUNT, AND MAY RAISE THE MINIMUM AMOUNT IN THE FUTURE. THE OFFERING WILL CONTINUE UNTIL IT HAS RAISED \$75,000,000 UNLESS TERMINATED SOONER BY THE GENERAL PARTNER IN ITS SOLE DISCRETION. THE MINIMUM AMOUNT REQUIRED OF FOREIGN INVESTORS MAY INCREASE IF THE LAW OR REGULATIONS OF THE EB-5 PROGRAM CONTROLLING THE MINIMUM AMOUNT ARE AMENDED. THIS OFFERING SUPERSEDES IN ITS ENTIRETY ALL PRIOR OFFERINGS MADE BY JAY PEAK HOTEL SUITES II L.P., IF ANY.

### **PURCHASE TERMS**

THE MINIMUM CAPITAL CONTRIBUTION SHALL BE FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000) US\$ (HEREIN REFERRED TO AS A "CAPITAL CONTRIBUTION") PLUS AN ADMINISTRATION FEE OF \$50,000 FOR A TOTAL COST OF \$550,000. THE SUBSCRIPTION PRICE IS PAYABLE IN CASH AND IN FULL UPON SUBSCRIPTION AND PAYMENT MUST ACCOMPANY DELIVERY OF THE SUBSCRIPTION AGREEMENT. THE LIMITED PARTNERSHIP RESERVES THE RIGHT TO REJECT ANY SUBSCRIPTION IN WHOLE OR IN PART, IN ITS SOLE DISCRETION.

### **EXEMPTION FROM REGISTRATION**

THE LIMITED PARTNERSHIP IS CLAIMING EXEMPTION FROM REGISTRATION REQUIREMENTS UNDER SECTION 4(2) OF THE SECURITIES ACT OF 1933, AS AMENDED, AND RULE 506 OF REGULATION D PROMULGATED THERE UNDER, AND FOR PERSONS OUTSIDE THE UNITED STATES UNDER REGULATION S PROMULGATED BY THE SEC ONLY TO PERSONS WHO ARE NOT "US PERSONS" WITHIN THE MEANING OF THE REGULATIONS. ACCORDINGLY, NO REGISTRATION STATEMENT WILL BE FILED WITH THE SEC IN CONNECTION WITH THIS OFFERING AND SALE OF THE INTERESTS PURSUANT TO THIS MEMORANDUM. IN ADDITION, THIS OFFERING IS BEING MADE WITHOUT REGISTRATION UNDER THE SECURITIES LAWS OF ANY STATE OR ANY OTHER JURISDICTION.

PROSPECTIVE INVESTORS ARE INVITED TO MAKE AN INDEPENDENT EXAMINATION OF THE BOOKS, RECORDS AND OTHER DOCUMENTS OF THE LIMITED PARTNERSHIP, AND MAY QUESTION THE APPROPRIATE OFFICERS AND DIRECTORS TO THE EXTENT THAT SUCH INVESTORS DEEM IT NECESSARY IN THEIR SOLE DISCRETION TO ANALYZE THE RISKS INVOLVED WITH THIS INVESTMENT. PROSPECTIVE INVESTORS SHOULD NOT RELY ON THE LIMITED PARTNERSHIP, OR ANY OF ITS EMPLOYEES OR AGENTS, WITH RESPECT TO THE JUDGMENTS RELATING TO THEIR INVESTMENT IN THE LIMITED PARTNERSHIP. PROSPECTIVE INVESTORS SHOULD RETAIN THEIR OWN PROFESSIONAL ADVISORS TO REVIEW AND EVALUATE THE ECONOMIC, TAX AND OTHER CONSEQUENCES OF AN INVESTMENT IN THE LIMITED PARTNERSHIP. THE LIMITED PARTNERSHIP WILL MAKE AVAILABLE, UPON

UPON SUBSCRIBING TO THIS OFFERING AND BECOMING A LIMITED PARTNER, IT IS AT THE SOLE RESPONSIBILITY AND RISK OF THE FOREIGN INVESTOR TO FILE THEIR I-526 PETITION. THERE IS NO REFUND FOR FAILURE TO FILE THE I-526 PETITION.

IF THE REGIONAL CENTER PILOT PROGRAM LAPSES ON SEPTEMBER 30, 2008, FOR EACH INVESTOR WHOSE CASE IS FILED WITH USCIS PRIOR TO THAT DATE THEIR \$500,000 CAPITAL CONTRIBUTION SHALL REMAIN INVESTED IN THE PARTNERSHIP PROVIDED:

1. THE REGIONAL CENTER PILOT PROGRAM IS REAUTHORIZED RETROACTIVELY OR IS PENDING REAUTHORIZATION WITHIN A TWELVE MONTH PERIOD FOLLOWING ITS LAPSE, AND THE INVESTOR'S I-526 PETITION IS IN DUE COURSE ADJUDICATED;

OR

2. LEGISLATION IS ENACTED OR PENDING PROVIDING SUBSTANTIALLY SIMILAR IMMIGRATION BENEFITS TO INVESTORS AS UNDER THE LAPSED REGIONAL CENTER PILOT PROGRAM AND EB-5 PROGRAM WITHIN A TWELVE MONTH PERIOD FOLLOWING THE REGIONAL CENTER PILOT PROGRAM'S LAPSE, AND THE INVESTOR'S I-526 PETITION IS IN DUE COURSE ADJUDICATED.

IF NEITHER OF THE EVENTS DESCRIBED UNDER 1 AND 2 OCCUR, THE INVESTOR AT HIS OPTION MAY EITHER REMAIN INVESTED IN THE PROJECT, OR REQUEST IN WRITING A REFUND OF THE CAPITAL CONTRIBUTION OF \$500,000. UPON RECEIPT OF A REQUEST OF REFUND TO THE GENERAL PARTNER, THE CAPITAL CONTRIBUTION WILL BE REFUNDED BY THE LIMITED PARTNERSHIP WITHIN A PERIOD OF 90 DAYS FROM RECEIPT OF SUCH REQUEST AND THE INVESTOR'S INTEREST IN THE LIMITED PARTNERSHIP SHALL AUTOMATICALLY BE TERMINATED AND THE INVESTOR SHALL NO LONGER HAVE ANY OF THE RIGHTS AND BENEFITS OF OWNERSHIP OF AN INTEREST OR ANY RIGHT TO PARTICIPATE IN ANY MANNER WHATSOEVER IN THE AFFAIRS OF THE PARTNERSHIP. THE INVESTOR'S RIGHTS ARE LIMITED SOLELY TO THE RETURN OF THEIR CAPITAL CONTRIBUTION OF \$500,000.

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MADE AN INVESTMENT IN THE PROJECT AND WHO IS WAITING TO FILE AN I-526 OR A CONSULAR PROCESSING OR AOS CASE (AND COLLATERAL APPLICATIONS FOR EMPLOYMENT AUTHORIZATION AND ADVANCED PERMISSION TO TRAVEL).

#### **LIMITATIONS ON RETURN OF FUNDS IF I-526 PETITION IS DENIED**

UPON SUBSCRIBING TO THIS OFFERING AND BECOMING A LIMITED PARTNER, IT IS AT THE SOLE RESPONSIBILITY AND RISK OF THE FOREIGN INVESTOR TO FILE THEIR I-526 PETITION. THERE IS NO REFUND FOR FAILURE TO FILE THE I-526 PETITION.

IN THE EVENT AN INVESTOR'S I-526 PETITION IS DENIED AT ANY TIME FOR REASONS OTHER THAN FRAUD OR MATERIAL MISREPRESENTATION, THE INVESTOR'S RIGHTS ARE LIMITED SOLELY TO THE RETURN OF THE INVESTOR'S \$500,000 CAPITAL CONTRIBUTION (BUT NOT THE \$50,000 ADMINISTRATION FEE) WITHIN NINETY (90) DAYS OF WRITTEN REQUEST THEREFOR TO THE GENERAL PARTNER.

IF CIS DENIES AN INVESTOR'S I-526 PETITION ON THE BASIS OF FRAUD OR MATERIAL MISREPRESENTATION IN THE INVESTOR'S I-526 PETITION OR ITS SUPPORTING DOCUMENTS PROVIDED BY THE INVESTOR, THE LIMITED PARTNERSHIP WILL BE ENTITLED TO RETAIN PAYMENT OF ALL FUNDS, INCLUDING THE INVESTOR'S \$500,000 CAPITAL CONTRIBUTION, INTEREST PAID ON ACCOUNT OF THE INVESTMENT AND ADMINISTRATION FEES.

IF THE REGIONAL CENTER PILOT PROGRAM LAPSES ON SEPTEMBER 30, 2008, FOR EACH INVESTOR WHOSE CASE IS FILED WITH USCIS PRIOR TO THAT DATE THEIR \$500,000 CAPITAL CONTRIBUTION SHALL REMAIN INVESTED IN THE PARTNERSHIP PROVIDED:

1. THE REGIONAL CENTER PILOT PROGRAM IS REAUTHORIZED RETROACTIVELY OR IS PENDING REAUTHORIZATION WITHIN A TWELVE MONTH PERIOD FOLLOWING ITS LAPSE, AND THE INVESTOR'S I-526 PETITION IS IN DUE COURSE ADJUDICATED;

OR

2. LEGISLATION IS ENACTED OR PENDING PROVIDING SUBSTANTIALLY SIMILAR IMMIGRATION BENEFITS TO INVESTORS AS UNDER THE LAPSED REGIONAL CENTER PILOT PROGRAM AND EB-5 PROGRAM WITHIN A TWELVE MONTH PERIOD FOLLOWING THE REGIONAL CENTER PILOT PROGRAM'S LAPSE, AND THE INVESTOR'S I-526 PETITION IS IN DUE COURSE ADJUDICATED.

IF NEITHER OF THE EVENTS DESCRIBED UNDER 1 AND 2 OCCUR, THE INVESTOR AT HIS OPTION MAY EITHER REMAIN INVESTED IN THE PROJECT, OR REQUEST IN WRITING A REFUND OF THE CAPITAL CONTRIBUTION OF \$500,000. UPON RECEIPT OF A REQUEST OF REFUND TO THE GENERAL PARTNER, THE CAPITAL CONTRIBUTION WILL BE REFUNDED BY THE LIMITED PARTNERSHIP WITHIN A PERIOD OF 90 DAYS FROM RECEIPT OF SUCH REQUEST AND THE INVESTOR'S INTEREST AS A LIMITED PARTNER SHALL AUTOMATICALLY BE TERMINATED AND THE INVESTOR SHALL NO LONGER HAVE ANY OF THE RIGHTS AND BENEFITS OF OWNERSHIP OF AN INTEREST OR ANY RIGHT TO PARTICIPATE IN ANY MANNER WHATSOEVER IN THE AFFAIRS OF THE PARTNERSHIP. THE INVESTOR'S RIGHTS ARE LIMITED SOLELY TO THE RETURN OF THEIR CAPITAL CONTRIBUTION OF \$500,000.

#### **ATTAINING LAWFUL PERMANENT RESIDENCE**

DESPITE THE APPROVAL OF AN INVESTOR'S FORM I-526, THERE CANNOT BE ANY GUARANTEE THAT THE INVESTOR OR THE INVESTOR'S SPOUSE OR ANY OF THE INVESTOR'S MINOR, UNMARRIED CHILDREN WILL BE GRANTED LAWFUL PERMANENT RESIDENCE. THE GRANT OF SUCH IMMIGRATION STATUS IS DEPENDENT UPON THE PERSONAL BACKGROUND OF EACH APPLICANT. ANY ONE OF SEVERAL GOVERNMENT AGENCIES MAY DETERMINE IN ITS DISCRETION, SOMETIMES WITHOUT THE POSSIBILITY OF APPEAL, THAT AN APPLICANT FOR LAWFUL PERMANENT RESIDENCE IS EXCLUDABLE FROM THE UNITED STATES. IN LIMITED INSTANCES, A WAIVER

OF A GROUND OF EXCLUSION MAY BE AVAILABLE UNDER THE LAW, BUT ADJUDICATIONS OF WAIVER APPLICATIONS ARE THEMSELVES MADE IN THE UNREVIEWABLE DISCRETION OF THE GOVERNMENT AND IT OFTEN TAKES A YEAR OR MORE TO OBTAIN A DECISION.

## **GROUND FOR EXCLUSION**

APPLICANTS FOR LAWFUL PERMANENT RESIDENCE MUST DEMONSTRATE, AFFIRMATIVELY, THAT THEY ARE ADMISSIBLE TO THE UNITED STATES. THERE ARE MANY GROUNDS OF INADMISSIBILITY THAT THE GOVERNMENT MAY CITE AS THE BASIS TO DENY ADMISSION FOR LAWFUL PERMANENT RESIDENCE.

VARIOUS STATUTES, INCLUDING, FOR EXAMPLE, SECTIONS 212, 237 & 241 OF THE IMMIGRATION AND NATIONALITY ACT, THE ANTITERRORISM & EFFECTIVE DEATH PENALTY ACT OF 1996 (AEDPA) AND THE ILLEGAL IMMIGRATION REFORM & IMMIGRANT RESPONSIBILITY ACT OF 1996 (IIRAIRA) SET FORTH GROUNDS OF INADMISSIBILITY, WHICH MAY PREVENT AN OTHERWISE ELIGIBLE APPLICANT FROM RECEIVING AN IMMIGRANT VISA, ENTERING THE UNITED STATES OR ADJUSTING TO LAWFUL PERMANENT RESIDENCE.

EXAMPLES OF ALIENS PRECLUDED FROM ENTERING THE UNITED STATES INCLUDE:

- (A) PERSONS WHO ARE DETERMINED TO HAVE A COMMUNICABLE DISEASE OF PUBLIC HEALTH SIGNIFICANCE;
- (B) PERSONS WHO ARE FOUND TO HAVE, OR HAVE HAD, A PHYSICAL OR MENTAL DISORDER, AND BEHAVIOR ASSOCIATED WITH THE DISORDER WHICH POSES, OR MAY POSE, A THREAT TO THE PROPERTY, SAFETY, OR WELFARE OF THE ALIEN OR OF OTHERS, OR HAVE HAD A PHYSICAL OR MENTAL DISORDER AND A HISTORY OF BEHAVIOR ASSOCIATED WITH THE DISORDER, WHICH BEHAVIOR HAS POSED A THREAT TO THE PROPERTY, SAFETY, OR WELFARE OF THE IMMIGRANT ALIEN OR OTHERS, AND WHICH BEHAVIOR IS LIKELY TO RECUR OR TO LEAD TO OTHER HARMFUL BEHAVIOR;
- (C) PERSONS WHO HAVE BEEN CONVICTED OF A CRIME INVOLVING MORAL TURPITUDE (OTHER THAN A PURELY POLITICAL OFFENSE), OR PERSONS WHO ADMIT HAVING COMMITTED THE ESSENTIAL ELEMENTS OF SUCH A CRIME;
- (D) PERSONS WHO HAVE BEEN CONVICTED OF ANY LAW OR REGULATION RELATING TO A CONTROLLED SUBSTANCE, ADMITTED TO HAVING COMMITTED OR ADMITS COMMITTING ACTS WHICH CONSTITUTE THE ESSENTIAL ELEMENTS OF SAME;
- (E) PERSONS WHO ARE CONVICTED OF MULTIPLE CRIMES (OTHER THAN PURELY POLITICAL OFFENSES) REGARDLESS OF WHETHER THE CONVICTION WAS IN A SINGLE TRIAL OR WHETHER THE OFFENSES AROSE FROM A SINGLE SCHEME OF MISCONDUCT AND REGARDLESS OF WHETHER SUCH OFFENSES INVOLVED MORAL TURPITUDE;
- (F) PERSONS WHO ARE KNOWN, OR FOR WHOM THERE IS REASON TO BELIEVE, ARE, OR HAVE BEEN, TRAFFICKERS IN CONTROLLED SUBSTANCES;
- (G) PERSONS ENGAGED IN PROSTITUTION OR COMMERCIALIZED VICE;
- (H) PERSONS WHO HAVE COMMITTED IN THE UNITED STATES CERTAIN SERIOUS CRIMINAL OFFENSES, REGARDLESS OF WHETHER SUCH OFFENSE WAS NOT PROSECUTED AS A RESULT OF DIPLOMATIC IMMUNITY;
- (I) PERSONS EXCLUDABLE ON GROUNDS RELATED TO NATIONAL SECURITY, RELATED GROUNDS, OR TERRORIST ACTIVITIES;
- (J) PERSONS DETERMINED TO BE EXCLUDABLE BY THE SECRETARY OF STATE OF THE UNITED STATES ON GROUNDS RELATED TO FOREIGN POLICY;

(K) PERSONS WHO ARE OR HAVE BEEN A MEMBER OF A TOTALITARIAN PARTY, OR PERSONS WHO HAVE PARTICIPATED IN NAZI PERSECUTIONS OR GENOCIDE;

(L) PERSONS WHO ARE LIKELY TO BECOME A PUBLIC CHARGE AT ANY TIME AFTER ENTRY;

(M) PERSONS WHO WERE PREVIOUSLY DEPORTED OR EXCLUDED AND DEPORTED FROM THE UNITED STATES;

(N) PERSONS WHO BY FRAUD OR WILLFULLY MISREPRESENTING A MATERIAL FACT, SEEK TO PROCURE (OR HAVE PROCURED) A VISA, OTHER DOCUMENTATION OR ENTRY INTO THE UNITED STATES OR OTHER BENEFIT UNDER THE ACT;

(O) PERSONS WHO HAVE AT ANY TIME ASSISTED OR AIDED ANY OTHER ALIEN TO ENTER OR TRY TO ENTER THE UNITED STATES IN VIOLATION OF LAW;

(P) CERTAIN ALIENS WHO HAVE DEPARTED THE UNITED STATES TO AVOID OR EVADE U.S. MILITARY SERVICE OR TRAINING;

(Q) PERSONS WHO ARE PRACTICING POLYGAMISTS; AND

(R) PERSONS WHO WERE UNLAWFULLY PRESENT IN THE UNITED STATES FOR CONTINUOUS OR CUMULATIVE PERIODS IN EXCESS OF 180 DAYS.

#### **NO RETURN OF FUNDS IF VISA OR ADJUSTMENT OF STATUS IS DENIED.**

FOLLOWING APPROVAL OF AN INVESTOR'S I-526 PETITION, THE INVESTOR AND THE SPOUSE AND QUALIFYING CHILDREN OF THE INVESTOR MUST APPLY FOR AN IMMIGRANT VISA OR ADJUSTMENT TO PERMANENT RESIDENT STATUS. AS PART OF THIS PROCESS, THEY UNDERGO MEDICAL, POLICE, SECURITY AND IMMIGRATION HISTORY CHECKS TO DETERMINE WHETHER ANY OF THEM ARE INADMISSIBLE TO THE UNITED STATES FOR ANY OF THE REASONS MENTIONED ABOVE OR FOR ANY OTHER REASON. THE VISA OR ADJUSTMENT OF STATUS MAY BE DENIED NOTWITHSTANDING THE ELIGIBILITY FOR OR APPROVAL OF THE I-526 PETITION. IF, FOLLOWING SUBSCRIPTION OF THE INVESTMENT FUNDS AND PAYMENT OF ADMINISTRATION FEE, THE INVESTOR OR THE SPOUSE OR ANY CHILDREN OF THE INVESTOR ARE DENIED A VISA FOR CONDITIONAL LAWFUL PERMANENT RESIDENCE OR DENIED ADJUSTMENT OF STATUS TO CONDITIONAL LAWFUL PERMANENT RESIDENCE SUCH ACTION WILL NOT ENTITLE THE INVESTOR TO THE RETURN OF ANY FUNDS PAID TO THE LIMITED PARTNERSHIP PURSUANT TO THIS OFFERING UNLESS AND UNTIL A SUBSTITUTE PARTNER IS FOUND AS SET FORTH IN SECTION 10.01 OF THE LIMITED PARTNERSHIP AGREEMENT, AND, IN ANY EVENT, THERE SHALL BE NO REFUND OF THE ADMINISTRATION FEES.

#### **CONDITIONAL LAWFUL PERMANENT RESIDENCE**

LAWFUL PERMANENT RESIDENCE STATUS GRANTED INITIALLY TO AN INVESTOR AND THE SPOUSE AND QUALIFYING CHILDREN OF THE INVESTOR IS "CONDITIONAL". EACH INVESTOR AND THE SPOUSE AND QUALIFYING CHILDREN OF THE INVESTOR MUST SEEK REMOVAL OF CONDITIONS BEFORE THE SECOND ANNIVERSARY OF LAWFUL PERMANENT ADMISSION TO THE UNITED STATES. THERE CANNOT BE ANY ASSURANCE THAT THE CIS WILL CONSENT TO THE REMOVAL OF CONDITIONS AS TO THE INVESTOR OR AS TO THE SPOUSE OR QUALIFYING CHILDREN OF THE INVESTOR, EACH OF WHOM MUST MAKE A SEPARATE APPLICATION TO REMOVE CONDITIONS. IF THE INVESTOR FAILS TO HAVE CONDITIONS REMOVED, THE INVESTOR AND THE SPOUSE AND CHILDREN OF THE INVESTOR WILL BE REQUIRED TO LEAVE THE UNITED STATES AND MAY BE PLACED IN REMOVAL PROCEEDINGS. EVEN IF THE INVESTOR SUCCEEDS IN HAVING CONDITIONS REMOVED, THE SPOUSE AND EACH QUALIFYING CHILD OF THE INVESTOR, SEPARATELY, MUST HAVE CONDITIONS REMOVED. FAILURE TO HAVE CONDITIONS REMOVED AS TO ANY OF THESE MEMBERS OF THE INVESTOR'S FAMILY MAY REQUIRE SOME MEMBERS TO DEPART FROM THE UNITED STATES AND SUCH FAMILY MEMBERS MAY BE PLACED IN REMOVAL PROCEEDINGS.

## **NO REGULATIONS REGARDING REMOVAL OF CONDITIONS**

THE CIS REGULATIONS GOVERNING LAWFUL PERMANENT RESIDENCE FOR INVESTORS DO NOT STATE SPECIFICALLY THE CRITERIA WHICH CIS MUST APPLY TO DETERMINE ELIGIBILITY FOR THE REMOVAL OF CONDITIONS TO LAWFUL PERMANENT RESIDENT STATUS. COURTS HAVE DETERMINED SOME STANDARDS TO BE FOLLOWED BY CIS IN SOME, BUT NOT ALL, CIRCUMSTANCES. THE LIMITED PARTNERSHIP MAY MAKE CERTAIN MANAGEMENT DECISIONS IN THE ABSENCE OF THESE SPECIFIC ELIGIBILITY CRITERIA. THE LIMITED PARTNERSHIP WILL SEEK AS MUCH INFORMATION AS POSSIBLE FROM CIS IN AN EFFORT TO ASSIST INVESTORS TO QUALIFY FOR THE REMOVAL OF CONDITIONS, WHERE GOOD BUSINESS PRACTICES PERMIT. THIS NOTWITHSTANDING, EACH INVESTOR SHOULD BECOME EDUCATED ABOUT THE STANDARDS THAT WILL DETERMINE ELIGIBILITY OF AN INVESTOR AND THE SPOUSE OR CHILDREN OF THE INVESTOR TO ACHIEVE UNCONDITIONAL LAWFUL PERMANENT RESIDENCE IN THE UNITED STATES PURSUANT TO THIS PROGRAM WHICH CURRENTLY IS IN A STATE OF EVOLUTION.

## **NUMERICAL QUOTAS**

CURRENTLY, 3,000 OF THE TOTAL 10,000 EB-5, FIFTH PREFERENCE VISA STATUSES ALLOCATED NATIONWIDE ANNUALLY ARE AVAILABLE TO ALIEN INVESTORS AND THE SPOUSES AND QUALIFYING CHILDREN OF INVESTORS WHO ARE MAKING AN INVESTMENT IN A TARGETED EMPLOYMENT AREA (TEA). THE JAY PEAK HOTEL SUITES PHASE II PROJECT IS SITUATED WITHIN A TEA. EB-5 STATUS IS AVAILABLE ON A FIRST-COME, FIRST-SERVED BASIS. IF MORE STATUSES ARE SOUGHT THAN ARE AVAILABLE, A DELAY IN THE AVAILABILITY OF EB-5, LAWFUL PERMANENT RESIDENT STATUS WILL RESULT. TO DATE, THE ALLOCATION OF VISAS FOR TEA'S HAS NOT BEEN OVER SUBSCRIBED DESPITE INCREASING DEMAND FOR VISAS IN THE FIFTH PREFERENCE. THERE IS NO INFORMATION AVAILABLE TO SUGGEST THAT THE FIFTH PREFERENCE, GENERALLY, OR THE ALLOCATION WITHIN THIS PREFERENCE REGARDING TEA'S, WILL BECOME OVERSUBSCRIBED IN THE FORESEEABLE FUTURE. THERE IS NO RELIABLE MEANS TO PREDICT IF SUCH A DELAY WILL OCCUR, OR, IF IT OCCURS, HOW LONG AN INVESTOR OR THE SPOUSE AND QUALIFYING CHILDREN OF THE INVESTOR WILL WAIT BEFORE VISA STATUS FOR THEM BECOMES AVAILABLE.

SOMETIMES THE NUMBER OF VISA STATUSES AUTHORIZED TO A PREFERENCE CHANGES OR THE UNUSED VISAS STATUSES ALLOCATED TO A PREFERENCE ARE RE-ALLOCATED TO A DIFFERENT PREFERENCE DURING A FISCAL YEAR OR THE PREFERENCE OF A VISA STATUS IS REDEFINED. DURING THE FISCAL YEAR OF THE U.S. GOVERNMENT ENDING SEPTEMBER 30, 2007, CIS RE-ALLOCATED THEN REMAINING EB-5 VISA STATUSES TO DIFFERENT PREFERENCES, CAUSING A DELAY IN EB-5 VISA AVAILABILITY ESTIMATED TO BE APPROXIMATELY THREE MONTHS. THERE IS NO RELIABLE MEANS TO PREDICT WHETHER OR WHEN ANY OF THESE POSSIBLE CHANGES WILL OCCUR OR RE-OCCUR. IN THE EVENT OF ANY OF THESE CHANGES, THE AVAILABILITY OF CURRENT EB-5, FIFTH PREFERENCE VISA STATUSES MAY END, THE NUMBER OF EB-5, FIFTH PREFERENCE STATUSES MAY DECREASE OR INCREASE, OR THE TIME IT TAKES TO ACQUIRE EB-5 STATUS MAY INCREASE SIGNIFICANTLY. OTHER CHANGES IN THE ADMINISTRATION OF THE VISA PREFERENCE SYSTEM MAY DELAY SIGNIFICANTLY OR PRECLUDE THE ABILITY TO OBTAIN A VISA FOR LAWFUL PERMANENT RESIDENCE OR TO ADJUST TO LAWFUL PERMANENT RESIDENCE.

## **EXPIRATION OF THE REGIONAL CENTER PILOT PROGRAM**

THE REGIONAL CENTER PILOT PROGRAM WAS FIRST CREATED IN 1992. SINCE THEN IT HAS BEEN EXTENDED, MOST RECENTLY IN 2003, UNTIL SEPTEMBER 30, 2008. THIS PROJECT SEEKS BENEFIT FROM THE REGIONAL CENTER PILOT PROGRAM SO THAT EMPLOYMENT CREATED INDIRECTLY BY INVESTMENTS IN THE PROJECT MAY BE COUNTED TOWARDS THE MINIMUM NUMBER OF JOBS NEEDED TO QUALIFY A FOREIGN INVESTOR, THE INVESTOR'S SPOUSE AND THE QUALIFYING CHILDREN OF THE INVESTOR TO HAVE CONDITIONS REMOVED. IT IS REPORTED THAT EB-5 PETITIONS ARE INCREASING IN REGIONAL CENTERS. ASSUMING THIS STATISTIC TO BE ACCURATE, SOME PREDICT THAT THE REGIONAL CENTER PILOT PROGRAM WILL BE EXTENDED BEYOND SEPTEMBER 30, 2008. THERE IS NO RELIABLE MEANS TO KNOW IF THE REGIONAL CENTER PROGRAM WILL BE EXTENDED.

IF THE REGIONAL CENTER PROGRAM IS NOT EXTENDED, INVESTORS IN DIFFERENT STAGES OF THEIR IMMIGRATION CASES SEEKING LAWFUL PERMANENT RESIDENCE MAY BE AFFECTED SIMILARLY OR DIFFERENTLY. THERE IS NO GUIDANCE AT THIS TIME FROM CIS ABOUT HOW IT WILL TREAT INVESTORS IN PROJECTS WITHIN REGIONAL CENTERS IF THE REGIONAL CENTER PILOT PROGRAM LAPSES. EB-5 INVESTORS IN THIS PROJECT WILL BE REQUIRED TO DEMONSTRATE SOME INDIRECT JOB CREATION AMONG THE REQUISITE MINIMUM JOBS REQUIRED DEPENDANT UPON THE NUMBER OF FOREIGN INVESTORS IN THE PROJECT. THE RIGHT TO RELY UPON INDIRECT JOB CREATION DEPENDS UPON THE REGIONAL CENTER PILOT PROGRAM. WITHOUT THE STATUTE IN EXISTENCE THAT AUTHORIZES REGIONAL CENTERS, IT IS NOT CERTAIN THAT CIS MAY "GRANDFATHER" THE RIGHT TO COUNT INDIRECT EMPLOYMENT FOR INVESTORS WHOSE CASES ARE PENDING. THE EFFECT UPON INVESTORS WHOSE CASES HAVE NOT BEEN FILED BEFORE THE REGIONAL CENTER PILOT PROGRAM LAPSES (IF IT DOES LAPSE) MAY BE TO FORECLOSE THE ABILITY TO OBTAIN CONDITIONAL LAWFUL PERMANENT RESIDENCE VIA THIS EB-5 PROJECT WHICH RELIES ON THE CREATION OF INDIRECT EMPLOYMENT. APPLICANTS FROM THIS PROJECT SEEKING REMOVAL OF CONDITIONS MAY HAVE THEIR APPLICATIONS DELAYED OR DENIED CAUSING INVESTORS, THEIR SPOUSES AND CHILDREN ACCOMPANYING THE INVESTOR DIFFICULTY IN OBTAINING EXTENSION OF THEIR CONDITIONAL LAWFUL PERMANENT RESIDENCE STATUS, DIFFICULTY IN OBTAINING EMPLOYMENT AUTHORIZATION IN THE U.S AND DIFFICULTY IN OBTAINING ADVANCE PAROLE TO FACILITATE TRAVEL OUTSIDE THE U.S. PENDING ADJUDICATION OF PETITIONS TO REMOVE CONDITIONS. IF AN APPLICATION TO REMOVE CONDITIONS IS DENIED BECAUSE THE REGIONAL CENTER PROGRAM HAS LAPSED AND HAS NOT BEEN RE-CREATED, THE INVESTOR AND THE INVESTOR'S SPOUSE AND CHILDREN ACCOMPANYING THE INVESTOR MAY BE ORDERED TO DEPART THE U.S., SUBJECT TO A REVIEW OF THE MATTER BY AN IMMIGRATION JUDGE.

LEGISLATION WAS PASSED IN THE U.S. HOUSE OF REPRESENTATIVES TO EXTEND THE REGIONAL CENTER PILOT PROGRAM FOR FIVE YEARS COMMENCING OCTOBER 1, 2008. THERE IS NO RELIABLE MEANS TO KNOW IF ANY DIFFERENCES BETWEEN THIS PIECE OF LEGISLATION AND ANY SIMILAR LEGISLATION BEING OR TO BE CONSIDERED BY THE U.S. SENATE WILL BE RECONCILED IN THE CONFERENCE COMMITTEE OF THE TWO BODIES SO THAT A PROPOSED LEGISLATIVE FIX TO THE SUNSET OF THE REGIONAL CENTER PILOT PROGRAM MAY BE SENT TO THE PRESIDENT OF THE U.S. TO BE SIGNED INTO LAW BEFORE OCTOBER 1, 2008.

#### **ACTIVE PARTICIPATION IN LIMITED PARTNERSHIP BUSINESS**

THE EB-5 PROGRAM REQUIRES THAT EACH INVESTOR BE ACTIVELY INVOLVED IN THE BUSINESS AFFAIRS OF THE LIMITED PARTNERSHIP. FAILURE TO BE ACTIVELY INVOLVED MAY JEOPARDIZE APPROVAL OF THE I-526 PETITION OR RESULT IN THE DENIAL OF LAWFUL PERMANENT RESIDENCE STATUS FOR THE INVESTOR AND THE SPOUSE AND THE QUALIFYING CHILDREN OF THE INVESTOR. THE LIMITED PARTNERSHIP AGREEMENT, REFLECTING THE EB-5 REGULATIONS GOVERNING WHAT LEVEL OF PARTICIPATION IS ACCEPTABLE TO MEET THE EB-5 CRITERIA, MANDATES THAT EACH LIMITED PARTNER SHALL PARTICIPATE IN THE MANAGEMENT OF THE BUSINESS OF THE PARTNERSHIP BY MAKING SUGGESTIONS OR RECOMMENDATIONS TO THE GENERAL PARTNER ON ISSUES OF POLICY IMPORTANT TO THE PARTNERSHIP. THE LIMITED PARTNERSHIP AGREEMENT ALSO PERMITS LIMITED PARTNERS TO PARTICIPATE IN ONE OR MORE OF THE ACTIVITIES (I) PERMITTED OF LIMITED PARTNERS UNDER THE VERMONT REVISED UNIFORM LIMITED PARTNERSHIP ACT AND (II) OTHERWISE SET FORTH UNDER THE LIMITED PARTNERSHIP AGREEMENT. NO LIMITED PARTNER SHALL CONTROL THE PARTNERSHIP'S BUSINESS OR MANAGEMENT OR HAVE ANY AUTHORITY TO ACT OR BIND THE PARTNERSHIP IN ANY MANNER CONTRARY TO THE PROVISIONS OF THE LIMITED PARTNERSHIP AGREEMENT.

## **RISKS ATTENDANT TO THE EB-5, FIFTH PREFERENCE VISA STATUS**

THE EB-5 PROGRAM HAS MANY REQUIREMENTS THAT MUST BE MET TO THE SATISFACTION OF CIS. THE FAILURE TO MEET EVEN ONE OF THESE REQUIREMENTS TO THE SATISFACTION OF CIS MAY RESULT IN THE DENIAL OF THE INVESTOR'S I-526 PETITION. AMONG THESE REQUIREMENTS FOR EACH INVESTOR ARE THE DEMONSTRATION OF THE FOLLOWING MATTERS; THE LIST IS NOT EXHAUSTIVE:

THE PROJECT IS SITUATED IN A TARGETED EMPLOYMENT AREA; IN THIS PROJECT, WITHIN A TOWN WHOSE POPULATION IS LESS THAN 20,000.

THE PROJECT IS SITUATED WITHIN AN APPROVED REGIONAL CENTER.

THROUGH ECONOMIC MODELING, THAT THE REQUIRED INVESTMENT FROM EACH FOREIGN INVESTOR WILL CREATE 10 FULL-TIME JOBS WITHIN THE REGIONAL CENTER THROUGH AND INCLUDING THE TIME THAT CONDITIONS ARE REMOVED. THE CREATION OF SOME OF THESE REQUIRED JOBS IS DEPENDENT UPON THE RESORT OWNER COMPLETING THE BUILD OUT OF GUEST AND OTHER FACILITIES WHOSE OPERATION IS PROJECTED TO CREATE THE NEEDED JOBS.

A NEW COMMERCIAL ENTERPRISE HAS BEEN ESTABLISHED AS A RESULT OF THE INVESTMENT IN CONCERT WITH OTHER INVESTMENTS.

FUNDS INVESTED IN THE LIMITED PARTNERSHIP HAVE BEEN LAWFULLY EARNED OR OTHERWISE LAWFULLY ACQUIRED.

THE MINIMUM INVESTMENT OF \$500,000 IN THE LIMITED PARTNERSHIP HAS BEEN PAID IN FULL AND IS DEEMED TO BE AT RISK.

THE INVESTOR MANAGES THE NEW ENTERPRISE ON A DAY-TO-DAY BASIS OR BY ASSISTING IN THE FORMULATION OF THE ENTERPRISE'S BUSINESS POLICY IN CONFORMANCE WITH THE REQUIREMENTS OF THE ACT REGARDING LIMITED PARTNERS IN A LIMITED PARTNERSHIP.

THE INVESTMENT HAS BEEN SUSTAINED DURING THE PERIOD OF CONDITIONAL LAWFUL PERMANENT RESIDENCE THROUGH AND INCLUDING THE TIME THAT CONDITIONS ARE REMOVED.

## **FAMILY RELATIONSHIPS**

(1) SPOUSES OF THE INVESTOR MAY ACCOMPANY OR FOLLOW TO JOIN AN INVESTOR WHO HAS BEEN GRANTED CONDITIONAL LAWFUL PERMANENT RESIDENCE PROVIDED THAT THE INVESTOR AND THE SPOUSE, DEEMED A DERIVATIVE BENEFICIARY, WERE MARRIED AT THE TIME OF THE INVESTOR'S FIRST ADMISSION TO THE UNITED STATES AS A CONDITIONAL LAWFUL PERMANENT RESIDENT OR FOLLOWING ADJUSTMENT OF STATUS TO LAWFUL PERMANENT RESIDENCE. CIS WILL NOT RECOGNIZE COMMON LAW MARRIAGES FOR THE PURPOSE OF PERMITTING A SPOUSE TO BE A QUALIFYING DERIVATIVE BENEFICIARY. IF THE RELATIONSHIP IS ONE IN COMMON LAW, THE "SPOUSE" OF THE INVESTOR MAY NOT ACQUIRE LAWFUL PERMANENT RESIDENT STATUS ON ACCOUNT OF THE RELATIONSHIP.

(2) CHILDREN OR STEP-CHILDREN OF THE INVESTOR MAY ACCOMPANY OR FOLLOW TO JOIN AN INVESTOR WHO HAS BEEN GRANTED CONDITIONAL LAWFUL PERMANENT RESIDENCE PROVIDED THAT THE INVESTOR CAN ESTABLISH PARENTAGE OR STEP-PARENTAGE AT THE TIME OF THE INVESTOR'S FIRST ADMISSION TO THE UNITED STATES AS A CONDITIONAL LAWFUL PERMANENT RESIDENT OR ADJUSTMENT OF STATUS TO LAWFUL PERMANENT RESIDENCE. FAILURE TO COMPLY WITH ALL APPLICABLE REQUIREMENTS MAY RESULT IN THE SEPARATION OF A CHILD FROM THE INVESTOR OR THE INVESTOR'S SPOUSE FOR PROTRACTED PERIODS, IN SOME INSTANCES FOR YEARS, WHILE OTHER IMMIGRATION OPPORTUNITIES ARE ATTEMPTED IN AN EFFORT TO REUNITE THE FAMILY.



(3) A "CHILD" IS SOMEONE UNDER THE AGE OF 21 YEARS WHO IS UNMARRIED. IF A CHILD BECOMES AGE 21 OR MARRIES BEFORE BEING ADMITTED TO THE U.S. AS A LAWFUL PERMANENT RESIDENT OR ADJUSTING TO LAWFUL PERMANENT RESIDENT STATUS, THE FORMER CHILD, NOW DEEMED A SON OR DAUGHTER, MAY NOT BE ELIGIBLE TO ACCOMPANY OR FOLLOW TO JOIN THE INVESTOR. IN SOME CIRCUMSTANCES, THE CHILD STATUS PROTECTION ACT MAY ASSIST A SON OR DAUGHTER TO QUALIFY AS A CHILD BY REDUCING THE DEEMED AGE OF THE SON OR DAUGHTER TO LESS THAN 21 YEARS. FAILURE TO MEET THE REQUIREMENTS OF THE CHILD STATUS PROTECTION ACT MAY RESULT IN THE SEPARATION OF A SON OR DAUGHTER FROM THE INVESTOR OR THE INVESTOR'S SPOUSE FOR PROTRACTED PERIODS, IN SOME INSTANCES FOR YEARS, WHILE OTHER IMMIGRATION OPPORTUNITIES ARE ATTEMPTED IN AN EFFORT TO REUNITE THE FAMILY.

(4) UNDER SOME CIRCUMSTANCES A CHILD WHO BECOMES 21 YEARS OF AGE OR MARRIES WHILE HOLDING CONDITIONAL LAWFUL PERMANENT RESIDENT STATUS, OR THE SPOUSE OF THE INVESTOR WHO IS DIVORCED FROM THE INVESTOR WHILE HOLDING CONDITIONAL LAWFUL PERMANENT RESIDENT STATUS, MAY BE ELIGIBLE TO REMOVE CONDITIONS BY BEING INCLUDED IN THE INVESTOR'S I-829 PETITION OR FILING A SEPARATE I-829 PETITION. FAILURE TO MEET QUALIFYING CONDITIONS, WHICH MAY NOT BE WITHIN THE CHILD'S OR DIVORCED SPOUSE'S CONTROL, AND, ABOUT WHICH THE LAW AND REGULATIONS DO NOT PROVIDE CLEAR GUIDANCE, WILL RESULT IN THE CHILD OR DIVORCED SPOUSE BEING PLACED IN REMOVAL PROCEEDINGS AND MAY REQUIRE THE CHILD OR DIVORCED SPOUSE TO DEPART THE UNITED STATES.

(5) UPON THE DEATH OF AN INVESTOR HOLDING CONDITIONAL LAWFUL PERMANENT RESIDENT STATUS, A SPOUSE AND QUALIFYING CHILDREN OF THE INVESTOR ALSO HOLDING SUCH STATUS ARE ENTITLED TO SEEK REMOVAL OF CONDITIONS BY SUBMISSION OF THE SAME EVIDENCE DEMONSTRATING COMPLIANCE WITH REQUIRED CRITERIA THAT CIS REQUIRES OF AN INVESTOR SEEKING TO REMOVE CONDITIONS. FAILURE OF EACH MEMBER OF THE FAMILY TO ESTABLISH THESE CRITERIA WILL RESULT IN THE DENIAL OF THE APPLICATION TO REMOVE CONDITIONS, PLACEMENT OF THE FAMILY MEMBERS IN REMOVAL PROCEEDINGS AND THEIR MANDATED DEPARTURE FROM THE UNITED STATES.

(6) IT IS UNCLEAR UNDER CIS PROCEDURES IF A CHILD WHO BECOMES A SON OR DAUGHTER BEFORE THE DEATH OF THE INVESTOR IS ENTITLED TO SEEK REMOVAL OF CONDITIONS. CIS REGULATIONS ARE SILENT ON THIS MATTER. IF CIS DOES NOT EXTEND THIS BENEFIT, SUCH A SON OR DAUGHTER WILL BE DENIED AN APPLICATION TO REMOVE CONDITIONS AND WILL BE PLACED IN REMOVAL PROCEEDINGS AND MAY BE MANDATED TO DEPART THE UNITED STATES.

#### **CONFIDENTIALITY**

A PROSPECTIVE INVESTOR, BY ACCEPTING RECEIPT OF THIS OFFERING MEMORANDUM, AGREES NOT TO DUPLICATE OR TO FURNISH COPIES OF THIS MEMORANDUM OR TO DIVULGE INFORMATION GARNERED FROM THIS MEMORANDUM OR ITS EXHIBITS TO PERSONS OTHER THAN SUCH INVESTOR'S INVESTMENT AND TAX ADVISORS, ACCOUNTANTS AND LEGAL COUNSEL, AND SUCH ADVISORS, ACCOUNTANTS AND LEGAL COUNSEL TOGETHER WITH THE PROSPECTIVE INVESTORS AND ANY OTHER PERSONS TO WHICH THIS MEMORANDUM OR THE RELATED DOCUMENTS COME INTO THEIR POSSESSION ARE PROHIBITED FROM DUPLICATING OR USING THIS MEMORANDUM, THE RELATED DOCUMENTS AND ALL EXHIBITS THERETO IN ANY MANNER OTHER THAN TO DETERMINE WHETHER THE INVESTOR WANTS TO INVEST INTO THE PARTNERSHIP. PROSPECTIVE INVESTORS ARE NOT TO CONSTRUE THE CONTENTS OF THIS MEMORANDUM AS LEGAL, INVESTMENT, IMMIGRATION OR TAX ADVICE, OR ANY OTHER ADVICE RELATED TO THE EFFICACY OF THE INVESTMENT TO THEM. THE GENERAL PARTNER HAS NOT ENGAGED ANY LEGAL OR OTHER ADVISORS TO REPRESENT PROSPECTIVE INVESTORS. EACH PROSPECTIVE INVESTOR SHOULD CONSULT THEIR OWN ADVISORS AS TO LEGAL, TAX AND RELATED MATTERS CONCERNING THE EFFICACY OF THIS INVESTMENT AND THE APPROPRIATENESS OF THIS INVESTMENT TO THEM AND ANY OTHER MATTERS CONCERNING THIS INVESTMENT. THE EXPENSE OF SUCH CONSULTATIONS SHALL BE PAID SEPARATELY BY THE INVESTOR.

**END OF SECTION 1**



# Jay Peak Hotel Suites Phase II L.P. Offering Memorandum

## Section 2 - Business Plan



## CONTENTS

IMPORTANT NOTICE .....	3
THE STATE OF VERMONT – A USCIS DESIGNATED REGIONAL CENTER.....	4
PHASE II: THE PROJECT OVERVIEW.....	4
JAY PEAK RESORT .....	4
MARKET REVIEW.....	4
THE PROJECT INVESTMENT; PHASE II .....	5
LOCATION.....	5
SECOND HOMES.....	5
THE FINANCIAL TRANSACTION .....	6
HIGHLIGHTS .....	6
CAPITALIZATION .....	8
SOURCE AND USE OF FUNDS .....	8
DEVELOPMENT OF THE PROJECTS .....	10
DEVELOPMENT PHASES.....	10
PHASE II DEVELOPMENT PERMITS .....	10
DEVELOPER AND CONSTRUCTION .....	11
JAY PEAK RESORT CONCEPTUAL MASTER PLAN .....	12
RESORT BUILD PLAN – CONCEPTUAL .....	13
JOB CREATION .....	14
JAY PEAK HOTEL SUITES PHASE II L.P. DEVELOPMENT STAGE – SUMMARY OF BUILD PHASES AND JOB CREATION POINTS .....	18
PROJECTED REVENUES: TEN YEAR SUMMARY OF HOTEL OPERATIONS AND ANCILLARY PROJECTS.....	20
HOTEL OPERATIONS .....	21
HOTEL INCOME AND MANAGEMENT .....	21
ALL SUITE HOTEL: 10 YEAR INCOME PROJECTIONS.....	22
HOTEL OPERATIONS: ASSUMPTIONS USED.....	23
INDOOR WATER PARK .....	24
INDOOR WATER PARK PROJECTED INCOME.....	25
WATER PARK: ASSUMPTIONS APPLIED .....	26
INDOOR ICE ARENA .....	27
INDOOR ICE ARENA: 10 YEAR INCOME SUMMARY .....	28
BOWLING CENTER .....	29
BOWLING ALLEY: INCOME SUMMARY.....	30
GOLF CLUBHOUSE .....	31
GOLF CLUBHOUSE INCOME SUMMARY .....	32
GENERAL PARTNER .....	33
FEES TO GENERAL PARTNER AND AFFILIATED ENTITIES.....	33

<i>General Partner's Management Compensation</i> .....	33
<i>General Partner's Compensation in the Event of a Sale or Other Disposition of Hotel</i> .....	33
LIMITATION OF LIABILITY OF GENERAL PARTNER .....	33
TRANSACTIONS WITH RELATED PARTIES .....	33
MANAGEMENT AGREEMENT .....	34
DISTRIBUTIONS TO INVESTORS .....	34
EXIT STRATEGIES .....	34
JAY PEAK MANAGEMENT TEAM .....	34
SALES STRATEGY .....	35
CONTINGENCY FEES AND PRE-OPENING WORKING CAPITAL .....	35
PRE-OPENING WORKING CAPITAL .....	35
LAND PURCHASE .....	35
LOCATION.....	36

## IMPORTANT NOTICE

**FORWARD LOOKING STATEMENTS:** ANY STATEMENTS THAT EXPRESS OR INVOLVE DISCUSSIONS WITH RESPECT TO PREDICTIONS, GOALS, EXPECTATIONS, BELIEFS, PLANS, PROJECTIONS, OBJECTIVES, ASSUMPTIONS OR FUTURE EVENTS OR PERFORMANCE ARE NOT STATEMENTS OF HISTORICAL FACT AND MAY BE "FORWARD LOOKING STATEMENTS. "FORWARD LOOKING STATEMENTS ARE BASED ON EXPECTATIONS, ESTIMATES AND PROJECTIONS AT THE TIME THE STATEMENTS ARE MADE THAT INVOLVE A NUMBER OF RISKS AND UNCERTAINTIES WHICH COULD CAUSE ACTUAL RESULTS OR EVENTS TO DIFFER MATERIALLY FROM THOSE PRESENTLY ANTICIPATED.

THIS BUSINESS PLAN CONTAINS FORWARD-LOOKING STATEMENTS AND PROJECTIONS THAT MAY ADDRESS, AMONG OTHER THINGS, THE HOTEL AND SKI RESORT AND ANCILLARY PROJECTS DEVELOPMENT AND STRATEGY, PROJECTED CONSTRUCTION TIMES, EXPANSION STRATEGY, DEVELOPMENT OF SERVICES, USE OF PROCEEDS, PROJECTED REVENUE AND CAPITAL EXPENDITURES, OPERATING COSTS, LIQUIDITY, JOB CREATION, ECONOMIC MODELING, DEVELOPMENT OF ADDITIONAL REVENUE SOURCES, DEVELOPMENT AND MAINTENANCE OF PROFITABLE MARKETING AND MANAGEMENT AND MAINTENANCE ALLIANCES, ABILITY TO DEVELOP "RESORT" IDENTIFICATION AND NATIONAL AND INTERNATIONAL EXPANSION, AND GENERAL PARTNER'S STATEMENTS OF EXPERIENCE AND EXPECTATIONS. NO ASSURANCE CAN BE MADE NOR IS ANY ASSURANCE GIVEN IN ANY FORM IMPLIED OR OTHERWISE THAT THESE FORECASTS WILL PROVE ACCURATE. NEITHER THE GENERAL PARTNER NOR THE LIMITED PARTNERSHIP HAS ANY OBLIGATION TO REVISE OR UPDATE ANY FORWARD LOOKING STATEMENT FOR ANY REASON.

THESE STATEMENTS MAY BE ALSO FOUND IN THE SECTIONS OF THE JAY PEAK HOTEL SUITES PHASE II L.P OFFERING MEMORANDUM ENTITLED "SUMMARY OF OFFERING," "RISK FACTORS," "USE OF PROCEEDS," "THE PARTNERSHIP'S BUSINESS PLAN" AND IN THE OFFERING MEMORANDUM GENERALLY. ACTUAL RESULTS COULD DIFFER MATERIALLY FROM THOSE ANTICIPATED IN THESE FORWARD-LOOKING STATEMENTS AND PROJECTIONS AS A RESULT OF VARIOUS FACTORS, INCLUDING ALL THE RISKS DISCUSSED IN "RISK FACTORS" WITHIN THE OFFERING MEMORANDUM. PROSPECTIVE INVESTORS SHOULD CAREFULLY CONSIDER ALL THESE RISKS, IN ADDITION TO OTHER INFORMATION CONTAINED WITHIN THE OFFERING MEMORANDUM BEFORE DECIDING WHETHER TO INVEST IN THE PARTNERSHIP.

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## SECTION 2

### Business Plan and Financial Data

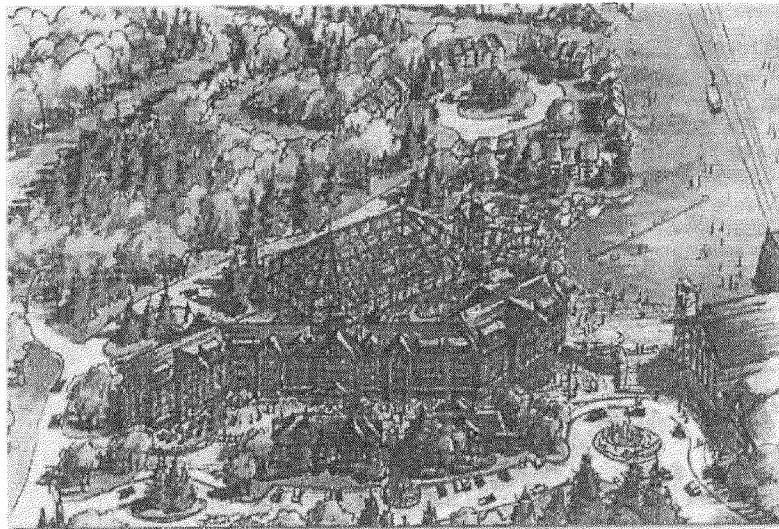
#### Executive Summary

#### The PARTNERSHIP and its business;

Summary of Principal Objectives and activities including Financial Reports and supporting schedules  
Important Notice: See Offering Memorandum: Risk Factors "Forward Looking Statements".

The Project consists of:

120 Unit all-suite Hotel; Indoor Water Park; Indoor Ice Arena; Bowling Alley; Golf Clubhouse.  
Jay Peak Operations: New Convention Center; International Spa; Admin Center Retail Units and Grocery Store.



Conceptual drawing depicting hotel of 120 suites; street level commercial and indoor water park. In the foreground is the new administration building and grocery store.

The second phase of the Jay Peak expansion project will comprise

- Multi storey building to include a 120 unit all-suite hotel, comprising a mix of studios, one, two bedroom apartments, three bedroom penthouse units,
- Spa and fitness center, Business and conference center facility, together with additional dining facilities and retail stores, administration building and grocery store
- Indoor Water Park. The new 32,000 sq ft. multi-Level, multi-Slide, indoor water park will offer exhilarating waterslides, lagoons and activity features will also house the games arcade, and water park eatery.
- Also Include the ancillary projects of:
  - Indoor Ice Rink Arena, twin ice facility
  - Indoor Bowling Alley Center,
  - Golf and Cross Country Ski Center Clubhouse, with pub and panorama vista restaurant.

The water park and other ancillary projects will provide recreational amenities most insulated from weather impact, and will keep occupancy rates high in the Suite Hotel accommodation

## THE STATE OF VERMONT – A USCIS DESIGNATED REGIONAL CENTER

In June 1997, the State of Vermont, Agency of Commerce and Community Development (ACCD), was granted a designation as an Approved Regional Center, ([Exhibit N]), by the then Immigration and Naturalization Service. The designation was renewed and the activities extended in March 2007. A qualifying investment in a commercial enterprise situated within the Regional Center, the State of Vermont, may assist investors in a an approved Project that fosters economic expansion through greater regional productivity, job creation or additional domestic capital investment to become eligible for admission to the United States of America as lawful permanent residents.

Jay Peak Resort a Ski and Golf Resort Complex established for over 50 years, and located in Jay Vermont is also located within the State of Vermont Regional Center and this Project has been structured so that foreign investors may meet the requirements under 8 U.S.C § 1153 (b)(5)(A) – (D); INA § 203 (b)(5)(A) – (D) of the Immigration & Nationality Act (the "Act") and qualify under this program (the "Program") to become eligible for admission to the United States of America as lawful permanent residents.

## PHASE II: THE PROJECT OVERVIEW

JAY PEAK HOTEL SUITES PHASE II L.P, with this second phase of the JAY PEAK EXPANSION PROJECT, will within the strategic center of Jay Peak Resort acquire title to and lease real estate and buildings from Jay Peak, Inc., a Vermont corporation with its principal place of business in Jay, Vermont (the "Resort Owner") at the Jay Peak Resort in Jay, Vermont for the purpose of constructing, operating and managing, as applicable, (a) a multi-floor building (and related improvements), which will comprise (i) one commercial condominium unit to be furnished, fit up and operated as an all suites hotel to be known as Jay Peak Hotel Suites Phase II, to be owned and operated by the Partnership (the "Hotel"); and (ii) one other commercial condominium unit to be conveyed to, and with build-out, furnishing and fit up to be done by the Resort Owner (the "Hotel Building Resort Owner Unit"), (b) a building (and related improvements), which will comprise one commercial condominium unit to be furnished, fit up and operated as administrative offices and a grocery and deli (the "Administrative Offices Unit" and collectively with the Hotel Building Resort Owner Unit, the "Resort Owner Units"); and (c) a golf clubhouse, indoor ice arena, bowling center and an indoor water park, all equipped, furnished and fit up (collectively, the "Ancillary Projects"), all of which Ancillary Projects will be leased for nominal consideration to the Partnership for a period of up to 10 years.

## JAY PEAK RESORT

Although JAY PEAK HOTEL SUITES PHASE II L.P. is a newly formed entity, Jay Peak Resort has been a successful, largely winter resort for over 50 years and is one of the leading ski resorts in North America. Jay Peak, ([www.jaypeakresort.com](http://www.jaypeakresort.com)) with 344 inches of average annual snowfall, the heaviest natural snowfall of any ski resort in the East, is, with the completion and opening of its new 18-hole championship golf course in June 2007, fast becoming a year-round family resort. With Phase I of the Jay Peak EB-5 Visa program for the new 57 All-Suite Hotel now fully subscribed, permits are approved, utilities are now to site, with full construction program scheduled to commence in Spring 2008 with projected competition in Autumn 2009. With all investor petitions for Phase I of project filed to date with the United States Immigration Service having been approved by USCIS in a matter of weeks, Phase I with a 100% success rate has been an outstanding success both for Jay Peak, and for the Immigrant Investors and their families, making a new life in the USA.

The second phase of the Jay Peak EB-5 project will comprise a multi storey building to include a 120 unit all-suite hotel, comprising a mix of studios, one, two bedroom apartments, three bedroom penthouse units, an Indoor Water Park, a Spa and fitness center, Business and conference center facility, together with additional dining facilities and retail stores. In addition the second phase will include the Ancillary Projects of an Indoor Ice Rink Arena, A Bowling Center, and a spectacular Golf Clubhouse, with pub and panorama vista restaurant. The new 32,000 sq ft. multi-Level, multi-Slide, Indoor Water Park offering exhilarating waterslides, lagoons and activity features will also house the games arcade, and water park eatery.

## MARKET REVIEW

"With the advent of Phase II of the Jay Peak EB-5 expansion program, this is a very exciting time for us," said Bill Stenger, President and CEO of Jay Peak, Inc. Although we already have a very successful ski resort, many times, even in peak season, poor weather will result in trips, vacations and meetings being cancelled. We sought opportunities that would help us expand into a year-round destination, insulate the Resort from the impact of weather, create weather-proof vacations, capture year-round revenues, yet allow us the freedom to continue to do what we have done so well for the last 50 years. With the completion of Phase II, Jay Peak resort will truly be a "Destination Resort" with a 12 month venue.

According to Mr. Stenger, hotels with indoor water parks will likely fill rooms almost 100% every weekend and school break all year long. Hotels/resorts with an indoor water park may extend their peak seasons from 100 days to 365 days. "In the current economy, resort owners that want more visitors are thinking cars instead of airplanes. There is a demand for families to visit 'drive to' destinations. By combining Jay Peak Ski Resort, which averages 300,000 skiers per year, with year-round activities such as an indoor water park, an indoor ice rink, a bowling alley, an international spa, conference center, and providing luxury accommodations in the beautiful new all-suite hotels, it is easy for families throughout New England, New York, Boston, and the province of Quebec in Canada, with Montreal and its over 3 million population, all being only around 90 minutes drive or less from Jay Peak to experience a four-star vacation in their own backyards, particularly with the benefit of the Championship Golf Course during May through October. In fact Jay Peak, in the North Eastern United States, is actually located within 6 hours drive of over 60 million population.

## THE PROJECT INVESTMENT; PHASE II

The Phase II project is open both to US investors, and foreign investors, with each foreign Investor seeking classification as an "Alien Entrepreneur" as required by law to currently invest \$500,000 USD to the project. JAY PEAK HOTEL SUITES PHASE II L.P., will within the strategic center of Jay Peak Resort, acquire title to and lease real estate and buildings from the Resort Owner at the Jay Peak Resort in Jay, Vermont for the purpose of constructing, operating and managing, as applicable, (a) a multi-floor building (and related improvements), which will comprise (i) one commercial condominium unit to be furnished, fit up and operated as an all suites hotel to be known as Jay Peak Hotel Suites Phase II, to be owned and operated by the Partnership (the "Hotel"); and (ii) one other commercial condominium unit to be conveyed to, and with build-out, furnishing and fit up to be done by the Resort Owner (the "Hotel Building Resort Owner Unit"), (b) a building (and related improvements), which will comprise one commercial condominium unit to be furnished, fit up and operated as administrative offices and a grocery and deli (the "Administrative Offices Unit" and collectively with the Hotel Building Resort Owner Unit, the "Resort Owner Units"); and (c) a golf clubhouse, indoor ice arena, bowling center and an indoor water park, all equipped, furnished and fit up (collectively, the "Ancillary Projects"), all of which Ancillary Projects will be leased for nominal consideration to, and operated by, the Partnership for a period of up to 10 years.

The architectural plans are in the course of preparation and some building permits are already being applied for. Upon approval and after issuance of all permits, building work will commence. It is anticipated that the Ancillary Projects will commence in late 2008, and the new hotel and water park in mid 2009. This will consume most of the cash invested into the Partnership over an 18 to 24 month period. The Ancillary Projects are projected to open in 2009, the Hotel is projected to open in 2010, and the investment will provide the investor with a monthly income upon commencement of operations projected to provide an annual average return to investors of 6.00% or more over a five year period. After three years of hotel operations it is anticipated an exit strategy via a structured sales program will be implemented whereby the Hotel will likely operate as a condominium-hotel, projected to include condominiums available for sale as wholly owned units and fractional ownership-units. This will provide for capital repayments to investors, and the possibility and potential of a capital gain.

## LOCATION

Jay Peak Resort is located in the central portion of Northern Vermont, approximately 65 miles northeast of Burlington, Vermont and approximately 90 miles southeast of Montreal, Quebec. The resort is located in the town of Jay, Vermont in Orleans County, two air miles from the Canadian border. The resort (founded in 1955) has evolved as a winter alpine ski resort over the past 50 years. In recent years, Jay Peak management has been working toward the creation of a year-round resort so that economic viability is strengthened, new permanent jobs are created, and the region prospers from this 4-season economic structure. Jay Peak has 75 ski-trails, glades and chutes covering approximately 450 acres, divided approximately 50% for intermediate skiers (appealing to the majority of skiers), 25% for expert skiers and 25% for beginning skiers. The trail and lift system allows for a substantial increase in skier visits and permits a comfortable level of utilization, with lower than average lift lines compared to other major ski resorts in Vermont. Jay Peak Resort land area consists of approximately 4,000 acres. Abundant water is available to the property and a modern \$7 million central sewage treatment facility has been completed by the Towns of Jay and Troy. Phase II now offers a unique opportunity to continue first class development of the mountainside resort while emphasizing environmental controls and sensitivity.

## SECOND HOMES

Jay Peak has constructed hundreds of condominiums and townhomes over the past 10 years and with the addition of 4-season amenities provided by Phase II, this pattern of resort second home purchases will accelerate. Though not financed under this offering, as a direct result of the extensive Ancillary Projects and additional resort facilities, it is projected that Jay Peak, Inc. will develop an average of 48 new condominium homes annually within the resort over the next ten to twelve years, which will also add considerably to the visitors and spending at the Resort. There are 150 acres reserved for this project.

When one combines the historic features of Jay Peak Ski Resort, its new championship golf course with the list of the above weatherproof amenities, anyone in the 80-million person drive market looking for a recreational second home should consider Jay Peak.

The demand for second home development and construction will be strong, steady, and significant and last for at least 10-12 years. Two, three, four and five bedroom town homes and condominiums will be located in ski-on and ski-off sites on-property adding to the resort bed base and adding significant consumer demand for the many new amenities offered with the Hotel II project.

Over a 10- 12-year period the proposed 350-400 units projected to be built represent 2,500 new guests accommodations to stay at and use the resort facilities above and beyond those 700 or so that can actually stay in Hotel II suites themselves.

Jay Peak Inc. will be the general contractor for all second home development over this period, projected to employ in excess of two hundred tradespersons and construction support personnel and other specialists. In addition to building the second homes, Jay Peak Inc. sells, manages and maintains all real estate at the resort. These permanent new construction jobs created are referenced in the Economic Report, and classified under indirect employment.

## THE FINANCIAL TRANSACTION

Investment Funds and value totaling \$87,000,000 are estimated as required to complete the Project, Investors providing up to \$75,000,000 pursuant to the Offering Memorandum and Jay Peak Inc. \$12,000,000. Jay Peak Inc. at its own cost, will build out the Resort Owner Units to provide additional guest facilities which will include a spa, conference center, retail and restaurant facilities, the administrative office and a grocery and deli building, pay all construction management costs for the Ancillary Projects, and contribute \$3,600,000 towards the Land Cost to the Partnership. The Development stage of the project is structured into nine (9) stages, with various job creation points, and is anticipated to take approximately 24/30 months, with the Golf Clubhouse and Indoor Ice Arena projected to commence construction in 2008, and to open in Spring/Summer 2009, the Water Park and Bowling Center to open by Spring/Summer 2010, and the main structure of the Hotel by mid of 2010, with occupation projected in December 2010. (See Chart: Summary of Build Phases and Job Creation Points herein). It is anticipated that the exterior structure of the Hotel building will be complete in early 2010, allowing commercial areas to be occupied and operated by Jay Peak Inc. so it can commence build out and commence initial operations (subject to no unforeseen delays or inclement weather factors during the exterior structure build phase).

## HIGHLIGHTS

- Total Construction Square Footage (est) Hotel Building 171,089 sq ft.; Admin Building 15,000 sq ft; Ancillary Projects: Water Park 32,000 sq ft, Ice Arena: 30,000 sq ft; Golf Clubhouse 24,000 sq ft; Bowling Center 12,000 sq ft.
- Total Project Cost \$87,000,000, from Investors: \$75,000,000; from Jay Peak: \$12,000,000
- Construction to commence July/Aug 2008, estimated completion December 2010
- Projected Revenues on completion of Project: Yr 1 \$15,523,698 Yr 5: 20,977,193 Yr. 10; \$26,233,548
- Projected Income on completion of Project: Yr 1 \$3,985,287 Yr 5: \$5,817,414 Yr. 10; \$7,1718,91
- Projected Annual % return to Investors: Yr 1: 5.31% Yr 5: 7.76% Yr. 10; 9.56%

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<b>JAY PEAK ALL SUITE HOTEL &amp; ANCILLARY PROJECTS - PHASE II</b>				
<b>ESTIMATED AND PROJECTED COST OF DEVELOPMENT AND PROJECTED REVENUES</b>				
<b>SOURCE OF FUNDS</b>		See Offering Memorandum Risk Factors: "Forward looking Statements"		
<b>TOTAL INVESTOR FUNDS *</b>			<b>\$75,000,000</b>	
<b>TOTAL JAY PEAK FUNDS</b>				<b>\$12,000,000</b>
LIMITED PARTNERSHIP INTERESTS; MINIMUM INVESTMENT \$500,000; TOTAL \$75,000,000		Investor Funds		Jay Peak Funds
<b>HOTEL</b>			<b>\$75,000,000</b>	<b>\$12,000,000</b>
	Sq.ft	Est. Cost sq ft		
TOTAL GROSS ESTIMATED # SQ. FT	171,089	\$204	<b>\$34,952,109</b>	
TOTAL #120 SUITES	111,514			
UNDERGROUND PARKING	37,558			
SHELL COMMERCIAL SPACE	22,017			<b>\$3,250,000</b>
ADMIN CENTER UNIT (free-standing)	15,000	\$140	<b>\$2,100,000</b>	<b>\$1,575,000</b>
<b>SUB-TOTAL</b>			<b>\$37,052,109</b>	
<b>ANCILLARY RESORT ACTIVITY PROJECTS</b>				
WATER PARK	32,402	\$380	<b>\$12,312,760</b>	
GOLF CLUB HOUSE	24,000	\$181	<b>\$4,344,000</b>	
ICE RINK ARENA	30,000	\$150	<b>\$4,500,000</b>	
BOWLING CENTER	15,000	\$120	<b>\$1,800,000</b>	
<b>SUB-TOTAL PROJECT BUILD COSTS</b>			<b>\$60,008,869</b>	<b>\$4,825,000</b>
<b>UTILITIES AND COMMON AREAS</b>			<b>\$1,730,000</b>	
CONSTRUCTION SUPERVISOR 15%			<b>\$5,557,816</b>	<b>\$3,443,514</b>
CONTINGENCIES - 5%			<b>\$3,000,443</b>	
PRE-OPENING & WORKING CAPITAL-			<b>\$500,000</b>	
LAND - (GROSS \$65,000 per unit, net: \$35,000)			<b>\$4,200,000</b>	<b>\$3,600,000</b>
<b>TOTAL INVESTMENT FUNDS - PHASE II</b>			<b>\$74,997,128</b>	<b>\$11,868,514</b>

<b>PROJECTED STATEMENT OF INCOME - 10 YEARS AT FULL OPERATIONAL LEVEL</b>					
<b>YEAR OF OPERATION</b>	<b>YEAR 1</b>	<b>YEAR 2</b>	<b>YEAR 3</b>	<b>YEAR 4</b>	<b>YEAR 5</b>
REVENUES	\$15,523,698	\$17,594,732	\$19,094,633	\$20,024,665	\$20,977,193
NET INVESTOR INCOME	\$3,985,287	\$4,985,692	\$5,482,102	\$5,566,895	\$5,817,414
ANNUAL PERCENTAGE INVESTOR RETURN	5.31%	6.65%	7.31%	7.42%	7.76%
<b>YEAR OF OPERATION</b>	<b>YEAR 6</b>	<b>YEAR 7</b>	<b>YEAR 8</b>	<b>YEAR 9</b>	<b>YEAR 10</b>
REVENUES	\$21,975,470	\$23,021,744	\$23,979,064	\$24,979,475	\$26,233,548
NET INVESTOR INCOME	\$6,015,020	\$6,114,545	\$6,499,069	\$6,785,225	\$7,171,891
ANNUAL PERCENTAGE INVESTOR RETURN	8.02%	8.15%	8.67%	9.05%	9.56%

<b>ADDITIONAL PROJECTED VISITORS -</b>	<b>YEAR 1</b>	<b>YEAR 2</b>	<b>YEAR 3</b>	<b>YEAR 4</b>	<b>YEAR 5</b>
HOTEL	118,560	124,488	130,416	136,344	137,707
DAY	35,568	37,346	39,125	40,903	41,312
CONDO	30,000	33,000	36,000	39,000	42,000
<b>TOTALS</b>	<b>184,128</b>	<b>194,834</b>	<b>205,541</b>	<b>216,247</b>	<b>221,020</b>
<b>ADDITIONAL PROJECTED VISITORS -</b>	<b>YEAR 6</b>	<b>YEAR 7</b>	<b>YEAR 8</b>	<b>YEAR 9</b>	<b>YEAR 10</b>
HOTEL	139,085	140,475	141,880	143,299	144,732
DAY	41,725	42,143	42,654	42,290	43,420
CONDO	45,000	48,000	60,000	60,000	60,000
<b>TOTALS</b>	<b>225,810</b>	<b>230,618</b>	<b>244,444</b>	<b>246,289</b>	<b>248,151</b>

IMPORTANT NOTES. SEE RISK FACTORS. FORWARD LOOKING STATEMENTS

ALSO NOTE:

All Construction Costs and Build Square footages and visitors are estimated, actual numbers will vary.

Projected Statement of Income is based upon completed total project in full operational activity

Projected Annual Percentage Return: is based upon investment amount of \$500,000

Interest earned on available cash funds paid to Investors monthly in arrears - See Offering Memorandum & Subscription Documents

## CAPITALIZATION

### Source and Use of Funds

Investors are being offered the opportunity to purchase limited partnership interests. The Capital Contribution of each Limited Partner to the Project shall be a minimum of \$500,000 in cash, which shall be applied to the Project as investor funds (the "Investment"). The Limited Partner shall not be obligated to make any additional Capital Contributions to the Partnership. The total of Investment Funds to be received from Limited Partners is \$75,000,000, additionally Jay Peak Inc. will contribute in cash, assets and services a total value of \$12,000,000 and the use of these funds is detailed in the Table and Related Notes detailed below.

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JAY PEAK ALL SUITE HOTEL & ANCILLARY PROJECTS - PHASE II					
DRAFT ESTIMATED AND PROJECTED COST OF DEVELOPMENT					
See Jay Peak Offering Memorandum Phase II "Forward Looking Statements"					
SOURCE OF FUNDS					
LIMITED PARTNERSHIP INTERESTS; MINIMUM INVESTMENT \$500,000; TOTAL \$75,000,000					
TOTAL INVESTOR FUNDS				\$75,000,000	
TOTAL JAY PEAK FUNDS					\$12,000,000
TOTAL PROJECT INVESTMENT				\$87,000,000	
USE OF FUNDS		Water Park	Hotel	Investor Funds	Jay Peak Funds
			Spa/Commercial		
TOTAL GROSS # SQ. FT		32402	171,089		
TOTAL #120 SUITES AVG.			111,314		
TOTAL # Shell Commercial Space			22,017		
UNDERGROUND PARKING			37,558		
ADMIN CENTER UNIT			15,000		
Notes: Ownership Structures: 120 Hotel Suites owned by LP Investors; Commercial Space, Grocery & Admin Center owned and operated by Jay Peak Inc. Ancillary Projects owned by Jay Peak Inc. leased to investors rent free for 10 years; all net operating profits to L.P. Investors					
HOTEL		Sq. ft	Cost sq ft		
INVESTOR FUNDS					
TOTAL CONSTRUCTION (S.F.)		171,089	\$181	\$30,967,109	
FURNISHING & EQUIPMENT				\$3,635,000	
OPERATING SYSTEMS EQUIPMENT				\$350,000	
ADMIN CENTER & VERMONT DELI		15,000	\$140	\$2,100,000	\$1,575,000
COMMERCIAL BUILD OUT		25,000	\$130		\$3,250,000
TOTAL HOTEL				\$37,052,109	\$4,825,000
ANCILLARY RESORT ACTIVITY PROJECTS					
		Sq. ft	Cost sq ft		
WATER PARK		32,402	\$380	\$12,312,780	
GOLF CLUB HOUSE		24,000	\$181	\$4,344,000	
ICE RINK ARENA		30,000	\$150	\$4,500,000	
BOWLING CENTER		15,000	\$120	\$1,800,000	
(note: Projects leased to Partnership on up to 10 year term at nominal rent)					
TOTAL ANCILLARY PROJECTS				\$10,644,000	
SUB-TOTAL PROJECT BUILD COSTS				\$60,008,869	
UTILITIES AND COMMON AREAS AND CAR PARKING				\$1,730,000	
CONSTRUCTION MANAGEMENT SUPERVISING 15%				\$5,557,816	\$3,443,514
CONTINGENCIES - 5%				\$3,000,443	
TOTAL BUILD COST				\$70,297,128	
PRE-OPENING & WORKING CAPITAL-				\$500,000	
TOTAL COST BEFORE LAND COST				\$70,797,128	
LAND - (GROSS \$65,000 per unit)					
NET COST TO L.P.		Cost per unit	# units	Totals	
CONTRACT PURCHASE PRICE		65000	120	\$7,800,000	
BUILD CREDIT TO L.P. FOR		10000	120	\$3,800,000	\$3,600,000
EXTERIOR STRUCTURE OF JAY PEAK COMMERCIAL SPACE					
TOTAL ESTIMATED COST OF PROJECT - PHASE 2				\$74,997,129	\$11,868,514
TOTAL INVESTMENT FUNDS - PHASE 2 (rounded to nearest \$million)				\$75,000,000	\$12,000,000
TOTAL PROJECT INVESTMENT				\$87,000,000	

## DEVELOPMENT OF THE PROJECTS

### Development Phases

The build out of Phase II will occur over a 24-month period beginning with plans finalized for the first stage of the Ancillary Projects by July 2008, and construction projected to commence September 2008. The initial portion of Phase II will be the construction of the Golf Clubhouse (to be used as Cross Country Skiing Center in Winter) and the Ice Arena (which will feature Hockey and the Curling Center). These two facilities will feature 4-season recreation, food and beverage facilities and will be an important occupancy driver for the Phase II Suite Hotel/Water Park that will see construction projected to commence in the spring of 2009.

The above two support amenities should be underway in the fall of 2008 and open for the public and guest use in spring/summer of 2009.

The main Hotel/Water park facility will take 18-24 months to complete and if started in spring 2009 could open for use by the Christmas Holiday season 2010 or soon thereafter.

The Hotel features several components: 120 suites, spa facility, conference center, indoor water park, bowling center (annexed to hotel) and several restaurants, shops and skier service features. The ground level commercial features and water park facility will be open first with the accommodations suites following shortly thereafter.

The development will be carried out in nine stages, Stages 1 through 9, all as more particularly detailed in the table on page 17. There are eight job creation points.

As will be noted from the chart, Stages 1 and 2 are projected to be completed by Spring 2009, at an estimated cost of \$10,678,500, and projected to create 90 new direct jobs, and approximately 300 indirect jobs. This is a critical path, point 'A and 'B' of the Project.

Stage 3 the Bowling alley is projected completed by December 2009 and Stage 4 the Water Park by October 2010. This is a critical path, point 'C and 'D' of the Project, and is projected to create 73 direct jobs and 239 Indirect Jobs.

The Hotel building comprises stages 5 through 9, and is projected to complete by December 2010. There are critical path points E, F, G and H of the Project, and is projected to create 362 direct jobs and 1083 Indirect Jobs.

The job creation information is detailed in the economic job impact report in the exhibit annexed hereto prepared by Economic & Policy Resources, Inc. of Williston Vermont, dated April 2008, detailing the permanent jobs created by the Project, both for direct and indirect jobs.

### Phase II Development Permits

The Jay Peak Master Plan for the entire Jay Peak Resort was conceptually approved in 1997 by the State of Vermont District #7 Environmental Commission ("DEC") and also applies to the area designated for this project (Copy of Master Plan Resort Expansion Study: see page 11). The DEC's conceptual approval in 1997 of future development plans by Jay Peak Resort, including hotel facilities, provides conditions and guidance for development applications made by Jay Peak Resort under the land use laws of the State of Vermont to obtain development permits (so-called Act 250 permits), including an application to be made for the construction of the Jay Peak Hotel Suites project. In addition, an application will be filed with the State of Vermont Agency of Natural Resources to obtain a subdivision permit authorizing the subdivision from the rest of the Jay Peak Resort of the parcel of land sufficient for the Hotel building and the building housing the Administrative Offices Unit, which application will take into account all wastewater and drinking water requirements for the project to insure sufficient capacity is available from onsite or municipal resources (see discussion in Section 1, Summary of the Offering, Jay Peak Resort, Development Potential).

On February 15<sup>th</sup>, 2008 the Jay/Troy Sewer Authority signed an agreement with Jay Peak Resort committing 500,000 gallons per day of sewage capacity from its soon-to-be-expanded waste water facility. Phase II will require 48,000 gallons per day for its operations – less than 10% of the new capacity the resort controls. The sewage treatment facility will open its new capacity 6 months before the Phase II hotel comes online.

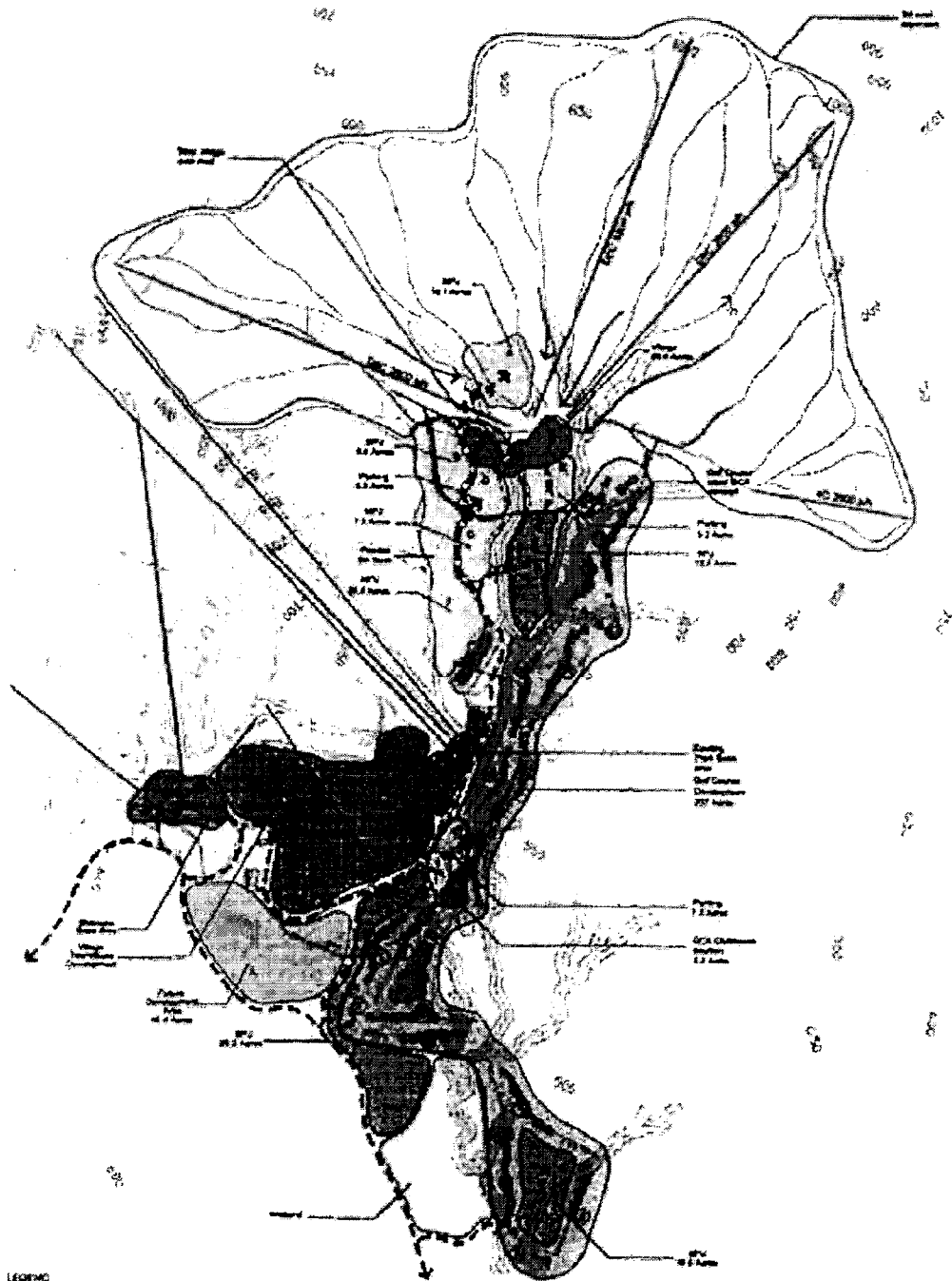
The town of Jay Development Review Board/Planning Commission has reviewed and on October 9<sup>th</sup>, 2007 approved the project. The approval letter is on file at the Jay Town Clerks Office.

## **Developer and Construction**

The construction of the new Hotel building will be overseen by Jay Peak Inc, who will enter into a contract with the General Partner for the Project. Jay Peak Inc. will receive contractor supervision payment of 15% of the Hotel build cost excluding land acquisition. Jay Peak Inc. has extensive experience in the general contracting role and will act as the General Contractor. Jay Peak Inc. has constructed approximately 300 condominiums and townhouses at Jay Peak Resort over a 10-year period representing over \$50 million in construction costs. Jay Peak Inc. will facilitate the construction of the Jay Peak Hotel Suites project and the Ancillary Projects.

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# JAY PEAK RESORT CONCEPTUAL MASTER PLAN



**LEGEND**

Existing LR	Public
Proposed LR	Golf Course Development
Designated for Use	Resort Area
Existing Development	Water Feature
Public	Resort Building
Public Development	Public Road
Resort Area	Resort Building
	Golf Course

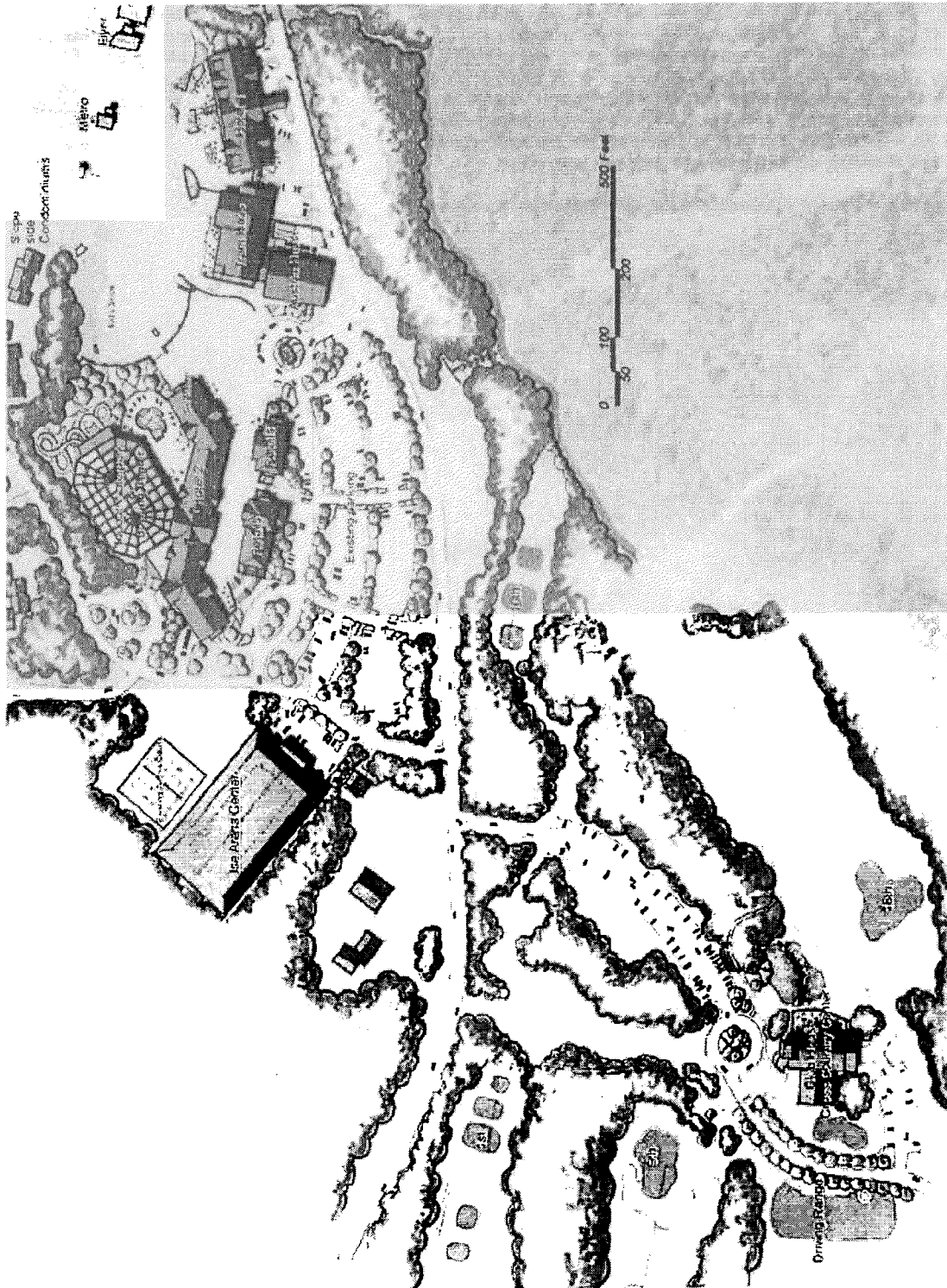
Land Use Alternative A

**JAY PEAK**  
Resort Expansion  
Study

**ecodign**

ecodign.com

## Resort Build Plan – Conceptual



## Job Creation

Economic Policy Resources, Inc. of Williston, Vermont, has carried out research and summarizes its findings by letter annexed hereto (see exhibit P). In 2011, the first full year of the expanded resort's operations, shows an impact of 1,532 permanent project full time jobs created in Vermont, and 655 full time jobs created in the rest of the USA during that calendar year, making a total of 2,245 new jobs created by the Project. This includes 525 direct jobs at the resort with 944 indirect jobs in the adjacent communities (high impact area) and 121 jobs in the remaining eight counties of the State of Vermont. In calendar year 2012, the job impact at the Resort increases to 537 permanent full time jobs, with 1051 indirect jobs in the adjacent communities (high impact area) and 132 jobs in the remaining eight counties of the State of Vermont, 697 in the rest of the USA making a total of 2,417 new jobs created by the Project by 2012. All this information is more fully detailed in the summary and table below.

The highlights and findings of Economic and Policy Resources Inc. are featured on the following page:

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## Highlights and Findings

- ❖ The proposed Phase II Jay Peak Resort expansion program includes \$75.0 million of EB-5 investor funds and an estimated \$12.0 million in additional resort owner value to develop new facilities at the resort. The investment activity is included in a resort master plan totaling \$201.1 million in new resort investment through 2015 including an additional \$114.1 million in resort hotel condominium units constructed for market sale. Included in the expansion program are visitor amenities such as a Water Park, Bowling Alley, Ice Skating Ring, and Golf Clubhouse, and additional accommodations being provided with a second full service hotel comprising 120 suites, Spa, Fitness Center, and Convention Center. Along with the development of these new facilities, Jay Peak Inc. will build 360 condominium units available to the resort's rental program developed over an eight year period. Taken altogether the expansion program is expected to increase the resort's competitive position within the eastern United States and Canadian travel and tourism markets.
  - Extensive expanded visitor amenities are expected to increase resort visitation by offering a full spectrum of recreational activities to families and by increasing the resort's offerings into spring, summer and fall seasons making the resort a year around operation.
  - Expanded overnight accommodations of 120 hotel suites are expected to increase the resort's capacity by an additional comfortable capacity of 520 overnight guests per night; with estimated maximum capacity added of 720 overnight guests per night.
- ❖ The proposed expansion will generate 2,245 full-time jobs in the U.S. economy by 2011 assuming construction work begins in the fall of 2008 and progresses through 2010 for the amenities and hotel and then through 2015 for additional condominium units.
  - Of the total 2,245 full-time jobs expected to be created, an estimated 1,532 are anticipated to be within the Vermont economy. An additional 655 full-time jobs are anticipated within the U.S. economy as an expansion of this magnitude has significant job impacts beyond the borders of a state as rural in character as Vermont.
  - Employment at the Jay Peak Resort is expected to increase by 525 full-time jobs in 2011 as a result of the proposed expansion program of the hotel and the amenities.
  - The construction and operation of the condominium expansion portion of the master plan, although not part of the EB-5 investor program will have a significant employment impact. Each

additional 48 condominium unit is expected to require 12 new direct permanent full-time jobs with the owner of the resort, Jay Peak, Inc. In addition, an ongoing hotel condominium construction program is expected to account for an additional 230 permanent full-time construction jobs. (These jobs are separated from direct employment listed in Summary Table S1 under "Indirect Employment.") The additional resort overnight capacity attributable to the hotel condominium units will bring substantial additional visitor spending to the resort and region and will increase utilization of the visitor amenities.

- o In summary, direct employment associated with the new hotel, the amenity package expansion and condominium development is projected to be 525 by the end of 2011 (Refer to Summary Table S1). Indirect employment as related to this project, net of the competitive effects of the industry and temporary construction employment, account for a full-time job creation of 1,065 within the state of Vermont. In total, the Vermont economy is estimated to grow by 1,590 permanent full-time jobs due to the Jay Peak Resort expansion.

**Table S1 Summary Economic Impact--Jay Peak Resort Phase II**

8-Apr-08

	Resort Expansion Period					Hotel & Amenity Operation				
	2008	2009	2010	2011	2012	2013	2014	2015		
<b>Resort Investment Spending (2008\$) [1]</b>										
Phase II Expansion (000s)	\$2,316.8	\$41,713.7	\$34,535.1							
On-going Condominium (000s)	\$8,800.0	\$16,250.0	\$16,250.0	\$16,250.0	\$16,250.0	\$16,250.0	\$16,250.0	\$16,250.0	\$16,250.0	\$16,250.0
Condominium Units Developed	24	48	48	48	48	48	48	48	48	48
<b>Total Employment (Full Time)</b>										
Direct Employment	0	0	0	525	537	553	569	585		
Indirect Employment										
Jay Peak, Inc. Jobs [2]	6	18	30	42	54	66	78	90		
Permanent Construction Jobs [3]	145	230	230	230	230	230	230	230		
Temporary Construction Jobs	23	622	400	58	63	67	72	75		
Other Sector Jobs	336	2,160	1,844	1,390	1,533	1,769	2,022	2,244		
<b>TOTAL US JOBS CREATED (Full Time)</b>	609	3,030	2,504	2,245	2,417	2,685	2,970	3,225		
<b>Employment by Region (Full Time)</b>										
Northwest VT										
Direct Employment	0	0	0	525	537	553	569	585		
Indirect Employment	223	1,373	1,243	944	1,051	1,238	1,437	1,614		
Balance VT	27	158	132	121	132	148	164	178		
<b>TOTAL VT JOBS CREATED (Full Time)</b>	250	1,530	1,375	1,590	1,720	1,939	2,170	2,377		
Net Temporary Construction Jobs	-23	-622	-400	-58	-63	-67	-72	-75		
<b>TOTAL QUALIFIED EB5 JOBS (Full Time)</b>	<b>227</b>	<b>908</b>	<b>975</b>	<b>1,532</b>	<b>1,657</b>	<b>1,872</b>	<b>2,098</b>	<b>2,301</b>		
U.S.	259	1,500	1,129	655	697	747	801	848		
<b>TOTAL US JOBS CREATED (Full Time)</b>	<b>509</b>	<b>3,030</b>	<b>2,504</b>	<b>2,245</b>	<b>2,417</b>	<b>2,685</b>	<b>2,970</b>	<b>3,225</b>		

Notes:

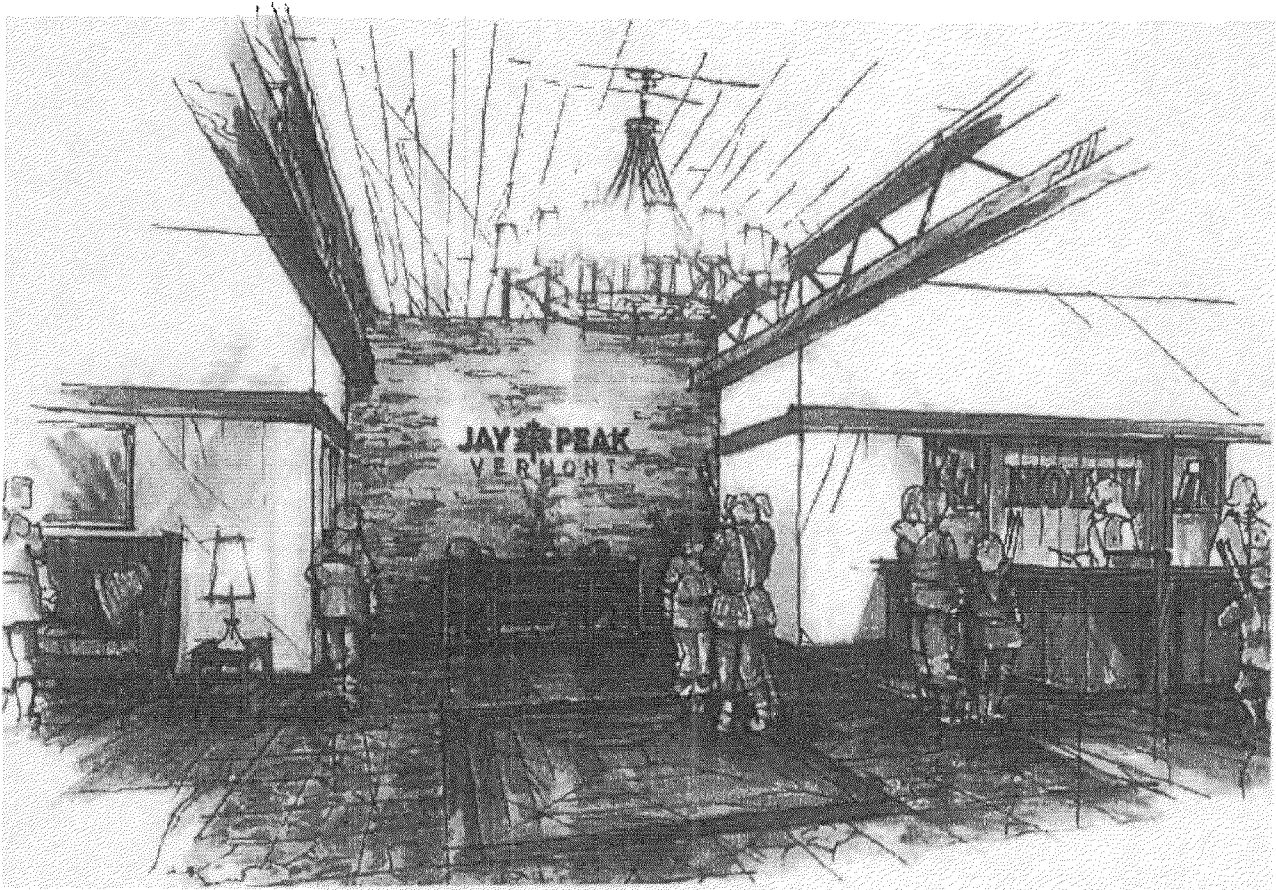
[1] Resort Investment Spending listed excludes \$7.8 million in land costs.

[2] Jay Peak, Inc. jobs are associated with additional condominium development and is based on applicant provided data where for every 48 units 12 full time employees will be hired by Jay Peak, Inc.

[3] On-going construction jobs are based on the consistent, annual development of 48 condominium units at the resort starting in 2009.

Prepared by: Economic &amp; Policy Resources, Inc.

See Risk Factors: Forward Looking Statements: Indirect Job Numbers are calculated pro-rata to the total number indirect jobs referenced within the Economic Report



Jay Peak Phase II - Hotel Reception Area, conceptual

# PROJECTED REVENUES: TEN YEAR SUMMARY OF HOTEL OPERATIONS AND ANCILLARY PROJECTS

Phase II PROJECT OVERALL SUMMARY											
JAY PEAK EB-5 EXPANSION PROJECT											
PROJECTED STATEMENT OF INCOME AND JOB CREATION											
FINANCED BY EB-5 INVESTORS \$75m - (Land \$4m)											
YEAR OF OPERATION	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10	YEAR 11
REVENUES											
HOTEL											
Direct Job Creation	127	127	127	127	133	140	147	152	157	167	167
REVENUE	\$3,325,989	\$3,961,075	\$3,535,359	\$3,970,830	\$3,410,101	\$3,873,128	\$10,354,755	\$10,710,547	\$11,000,883	\$11,776,979	\$11,776,979
NET INCOME	\$55,250	\$66,347	\$71,128	\$74,807	\$78,468	\$82,283	\$86,290	\$89,505	\$92,425	\$98,141	\$98,141
WATER PARK											
Direct Job Creation	56	57	64	66	68	72	76	80	85	90	90
REVENUE	\$1,007,897	\$1,304,812	\$3,046,268	\$5,343,861	\$5,652,345	\$5,982,175	\$6,345,607	\$6,720,071	\$7,116,630	\$7,538,007	\$7,538,007
NET INCOME	\$1,217,365	\$1,278,000	\$3,405,778	\$1,454,389	\$1,543,450	\$1,626,873	\$1,740,109	\$1,817,119	\$1,903,402	\$2,000,840	\$2,000,840
GOLF CLUBHOUSE											
Direct Job Creation	60	68	68	70	72	75	77	79	81	84	84
REVENUE	\$2,400,294	\$3,080,323	\$3,172,733	\$3,267,915	\$3,365,953	\$3,466,931	\$3,570,939	\$3,678,087	\$3,788,409	\$3,902,082	\$3,902,082
NET INCOME	\$208,040	\$433,353	\$467,874	\$482,424	\$497,617	\$513,265	\$529,865	\$545,955	\$563,084	\$580,987	\$580,987
ICE ARENA											
Direct Job Creation	30	32	32	35	35	35	35	35	35	35	35
REVENUE	\$1,004,838	\$1,232,899	\$1,204,912	\$1,058,238	\$1,427,200	\$1,488,590	\$1,373,438	\$1,052,167	\$1,734,770	\$1,821,509	\$1,821,509
NET INCOME	\$272,943	\$254,854	\$271,701	\$289,453	\$308,192	\$327,968	\$348,817	\$370,856	\$394,007	\$418,503	\$418,503
BOWLING ALLEY											
Direct Job Creation	16	17	17	18	19	19	20	20	21	22	22
REVENUE	\$235,453	\$248,093	\$258,936	\$268,494	\$277,301	\$285,863	\$294,679	\$303,159	\$312,745	\$321,245	\$321,245
NET INCOME	\$235,453	\$248,093	\$258,936	\$268,494	\$277,301	\$285,863	\$294,679	\$303,159	\$312,745	\$321,245	\$321,245
SUB-TOTALS											
REVENUES	\$15,323,698	\$17,594,732	\$19,994,633	\$20,024,655	\$20,977,193	\$21,975,470	\$23,021,744	\$23,979,084	\$24,978,475	\$26,323,548	\$26,323,548
NET INVESTOR INCOME	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200
ANNUAL PERCENTAGE RETURN	5.31%	6.65%	7.15%	7.42%	7.79%	8.07%	8.15%	8.27%	8.35%	8.58%	8.58%
FINANCED BY US INVESTORS \$8m + (Land \$4m)											
REVENUES											
COMMERCIAL											
SPA CONVENTION RETAIL											
Direct Job Creation	95	95	95	95	95	95	95	95	95	95	95
REVENUE	\$1,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
GROCERY/DELIVERIES/BEER											
Direct Job Creation	40	40	40	40	40	40	40	40	40	40	40
REVENUE	\$1,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
Other Direct Job Creation	30	30	30	30	30	30	30	30	30	30	30
ADMINISTRATION											
ONGOING CONSTRUCTION MAINTENANCE											
RESORT ACTIVITY JOB CREATIONS											
SUB-TOTALS											
REVENUES	\$4,800,000	\$5,000,000	\$5,382,780	\$5,750,181	\$5,922,888	\$6,100,387	\$6,283,378	\$6,471,376	\$6,866,838	\$6,866,838	\$6,866,838
Direct Job Creation	235	238	244	252	258	260	268	268	243	243	243
GRAND TOTALS											
REVENUES	\$20,323,698	\$22,684,732	\$25,377,413	\$25,774,836	\$26,899,879	\$28,075,857	\$29,305,122	\$30,450,460	\$31,845,313	\$33,190,386	\$33,190,386
Direct Job Creation	525	537	553	569	585	600	622	622	622	622	622
VISITORS											
HOTEL	118,580	124,488	130,416	136,344	137,707	139,065	140,475	141,880	143,289	144,732	144,732
DAY	35,588	37,346	39,125	40,903	41,312	41,725	42,143	42,564	42,989	43,470	43,470
CONDO	30,000	33,000	36,000	39,000	42,000	45,000	48,000	51,000	54,000	57,000	57,000
TOTALS	184,168	194,834	205,541	216,247	221,020	225,810	230,618	244,444	245,288	245,288	245,288

## HOTEL OPERATIONS

**Hotel II Suites** – Within Hotel II will be 120 one, two and 3 bedroom suites. Fully furnished and located at the base of Jay Peak, these accommodations will have elegant interiors and wonderful views of the mountain above and valley below. Each suite will have a full kitchen, dining and living area and will accommodate 2-4 persons in the one bedroom suites with 4-8 persons in the 2 and 3 bedroom configurations.

The Hotel Suites will largely feature vacation packages of 2-3 day weekends or 3, 5 and 7 day mid-week vacations. The popularity of this facility in international markets like the U.K. makes longer stay of 10 days to 14 days a priority.

**Spa Facilities** – Within the main building of Hotel II a professional spa will occupy one entire wing of the second floor, approximately 17,000 sq. ft. It will offer a variety of contemporary services to guests and day visitors as well. Open year-round and weatherproof, the spa will be a compliment to the other recreational services mentioned thus far.

**Conference Center/Business Center** – Occupying approximately 15,000 sq. ft the Conference Center will allow meeting and functions for regional organizations and companies to hold meeting and events in a pristine recreational setting with 4-season amenities for any type of guest. Three meeting rooms convertible to one large room will accommodate 500 participants for meeting meals and trade shows. Conferences will be an important motivator for hotel occupancy several seasons of the year.

**Restaurants and Retail** – It is projected that up to four restaurants and six retail shops will dot the ground floor and first floor of Hotel II. The frontal buildings before the hotel will also house retail space creating the feel of a pedestrian village, and a commercial hub for all Jay Peak guests.

## HOTEL INCOME AND MANAGEMENT

The management of the Jay Peak Hotel Suites facility will be handled by Jay Peak, Inc., which will be employed by the General Partner under a Management Agreement (Exhibit R), which inter alia provides for compensation to Jay Peak inc. of 50% of room rental revenues. The management and staff for the Hotel Suites operation itself will be new employees hired from the region. Several hundred direct and indirect jobs will be created as a result of this project; all as more particularly described in the economic report (see Exhibit P).

The following are among the principal duties and services of the new Hotel Suites staff, as provided by Jay Peak, Inc. at its own cost under its management contract. (See Exhibit R):

Accounting Function  
Check-in and check-out services  
Security deposit system management  
Payment of accounts  
Deposits of receipts  
Tax filing and other governmental financial reporting

Marketing and Sales  
Package creation and promotion  
Group and Conference business sales

Housekeeping and Maintenance

Guest Services and Concierge Service

Upon commencement of Hotel operations, the Limited Partnership projects the Income and Expenses as detailed in Table 2 hereunder. Gross Revenues in Year 1 are projected at \$6,626,989 and a net income projected of \$2,361,693 after reserves for replacement, but before interest, depreciation, taxes and amortization and replacement reserves for distribution to the Limited Partners pursuant to the Limited Partnership Agreement – "Distributions to Limited Partners".



## ALL SUITE HOTEL: 10 YEAR INCOME PROJECTIONS

JAY PEAK EB-5 EXPANSION PROJECT PROJECTED STATEMENT OF INCOME										
Phase II: All Suite Hotel comprising 120 Units --See Important Note, Forward Looking Statements--										
YEAR OF OPERATION	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
Stabilization Adjustments - First 4 years of operations	85%	90%	95%	100%						
REVENUES										
ROOMS	\$6,525,394	\$7,353,942	\$8,424,424	\$9,862,536	\$9,288,379	\$9,753,874	\$10,228,863	\$10,587,908	\$10,958,485	\$11,640,506
TELEPHONE	\$104,595	\$107,733	\$110,985	\$114,204	\$117,723	\$121,254	\$124,892	\$128,639	\$132,498	\$136,473
OCCUPANCY 68% ROOMDAYS 247 - 4 persons	\$6,629,989	\$7,961,675	\$8,535,389	\$9,976,730	\$9,406,101	\$9,875,128	\$10,354,755	\$10,716,547	\$11,090,983	\$11,776,979
	118560	124488	130416	136344	137707	139085	140475	141880	143298	144732
DIRECT COSTS										
MANAGEMENT FEE	\$2,407,870	\$2,513,262	\$2,649,481	\$2,859,761	\$2,789,514	\$2,926,152	\$3,068,959	\$3,176,372	\$3,287,945	\$3,492,152
LABOR	\$1,305,079	\$1,570,788	\$1,644,335	\$1,772,307	\$1,659,876	\$1,950,775	\$2,035,973	\$2,117,582	\$2,191,697	\$2,328,101
OTHER VARIABLE EXPENSES	\$3,712,348	\$4,084,650	\$4,333,866	\$4,431,268	\$4,548,189	\$4,837,637	\$5,114,831	\$5,237,854	\$5,370,242	\$5,820,253
TOTAL FEE	\$53,676	\$86,126	\$86,772	\$91,435	\$94,178	\$97,003	\$99,874	\$102,811	\$105,908	\$109,178
TELEPHONE	\$3,746,025	\$4,170,236	\$4,423,138	\$4,622,703	\$4,743,368	\$4,934,640	\$5,214,845	\$5,389,385	\$5,585,241	\$5,929,431
EMPLOYEES (FTE) (Avg Wage \$9.5 to \$10 pm)	127	127	127	127	133	140	147	152	157	167
GROSS PROFIT	\$2,833,364	\$3,794,438	\$4,112,261	\$4,454,127	\$4,672,734	\$4,901,188	\$5,139,910	\$5,319,682	\$5,505,742	\$5,847,548
INDIRECT COSTS & ADMIN EXPENSES										
ELECTRICITY & HEATING	\$397,796	\$389,084	\$512,123	\$538,910	\$564,966	\$592,505	\$621,245	\$642,983	\$665,459	\$708,619
MAINTENANCE & REPAIRS	\$105,762	\$196,340	\$210,551	\$403,127	\$404,910	\$515,212	\$518,290	\$570,879	\$570,831	\$1,164,051
ROYALTIES	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
MARKETING & PROMOTION (Inc. in Maint. Fee)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
OTHER ADMINISTRATIVE COSTS	\$185,782	\$198,340	\$219,931	\$227,583	\$185,918	\$155,977	\$204,597	\$215,754	\$119,470	\$232,910
	\$788,323	\$790,764	\$943,505	\$1,203,300	\$1,215,833	\$1,312,691	\$1,348,132	\$1,439,517	\$1,355,160	\$2,103,478
EBITDA	\$2,044,041	\$3,000,658	\$3,178,906	\$3,250,827	\$3,456,881	\$3,528,370	\$3,495,638	\$3,406,140	\$3,525,285	\$3,744,068
RESERVE FOR REPLACEMENT	\$132,600	\$188,042	\$213,385	\$224,424	\$282,483	\$286,254	\$340,843	\$321,486	\$332,728	\$353,308
PROJ. EARNINGS - SUITE HOTEL	\$1,911,441	\$2,801,616	\$2,965,522	\$3,026,406	\$3,174,398	\$3,232,116	\$3,184,996	\$3,084,644	\$3,192,535	\$3,390,759
Income per available suite (room) per annum (PAR)	\$15,929	\$23,347	\$24,713	\$25,220	\$26,453	\$26,934	\$26,542	\$25,705	\$26,604	\$28,256
TOTAL EARNINGS	\$1,911,441	\$2,801,616	\$2,965,522	\$3,051,626	\$3,200,852	\$3,259,051	\$3,211,537	\$3,110,340	\$3,219,140	\$3,419,015



## Hotel Operations: Assumptions Used.

### JAY PEAK EXPANSION PROJECT DRAFT ASSUMPTIONS - SUITES AND OCCUPANCY

Phase 2: All Suite Hotel comprising 120 Units

\*\*See Important Note: Forward Looking Statements

SUITES UNIT ANALYSIS								
	Units	Prime Time Room Rate	Per Day	High season Room Rate	Per Day	Low Season Room Rate	Per Day	Totals
8 Units	25	\$185.00	5075	\$180.00	4500	\$120.00	3120	
1 Bed	36	\$295.00	10620	\$260.00	9000	\$146.00	5220	
2 Bed	50	\$360.00	18000	\$320.00	16000	\$220.00	11000	
3 bed penthouse	8	\$860.00	6880	\$660.00	5280	\$343.00	2744	
Totals	120		40495		34890		72084	
Days Occupied (see Occupancy Table below)			73		69		105	247
Gross Revenue Per Season Per Annum			\$2,955,770		\$2,408,720		\$2,318,820	\$7,681,310
*Est. Average Suite Unit Floor Area est: 800 sq. ft.								
			73		69		105	
Average Daily Rate per Unit Suite								\$311

Note: Three years projected to reach stabilized occupancy with Year 1 - estimated at 85% of full operations **\$7,681,310** 85.00% **\$6,529,114**

OCCUPANCY RATE									
	HOTEL SUITES YEAR 1			HOTEL SUITES YEAR 4			HOTEL SUITES YEAR 10		
	DAYS AVAIL.	PERCENT OCCUPIED	DAYS OCCUPIED	DAYS AVAIL.	PERCENT OCCUPIED	DAYS OCCUPIED	DAYS AVAIL.	PERCENT OCCUPIED	DAYS OCCUPIED
	#	%	#	#	%	#	#	%	#
<b>PRIME TIME</b>									
CHRISTMAS & NEW YEAR	8	100%	8	8	100%	8	8	100%	8
GEORGES WASHINGTON W/E	5	90%	5	5	90%	5	5	90%	5
SCHOOL BREAK, QUEBEC	5	85%	4	5	85%	4	5	85%	4
SCHOOL BREAK, ONTARIO	5	100%	5	5	100%	5	5	100%	5
EASTER	3	85%	3	3	85%	3	3	85%	3
WEEKEND, WINTER	24	90%	22	24	95%	23	24	95%	23
WEEKEND, SUMMER	20	90%	18	20	95%	19	20	95%	19
CONSTRUCTION HOLIDAY	10	90%	9	10	95%	10	10	95%	10
	80		73	80		76	80		76
<b>OTHER PERIODS</b>									
WEEKDAYS, WINTER	45	85%	29	45	75%	34	45	80%	36
WEEKDAYS, SUMMER	40	65%	26	40	75%	30	40	80%	32
FALL & SPRING DAYS	20	65%	13	20	75%	16	20	75%	15
	105		69	105		79	105		83
<b>LOW OCCUPANCY PERIODS</b>	175	80%	105	175	70%	123	175	80%	141
<b>CLEANING DAYS</b>	5			5			5		
<b>TOTAL</b>	<b>385</b>	<b>89%</b>	<b>247</b>	<b>385</b>	<b>76%</b>	<b>278</b>	<b>385</b>	<b>82%</b>	<b>300</b>

Note: Suites 5 Rates also increased 1% p.a

Note: Suites 6 Rates also increased 1% p.a from Yr 4

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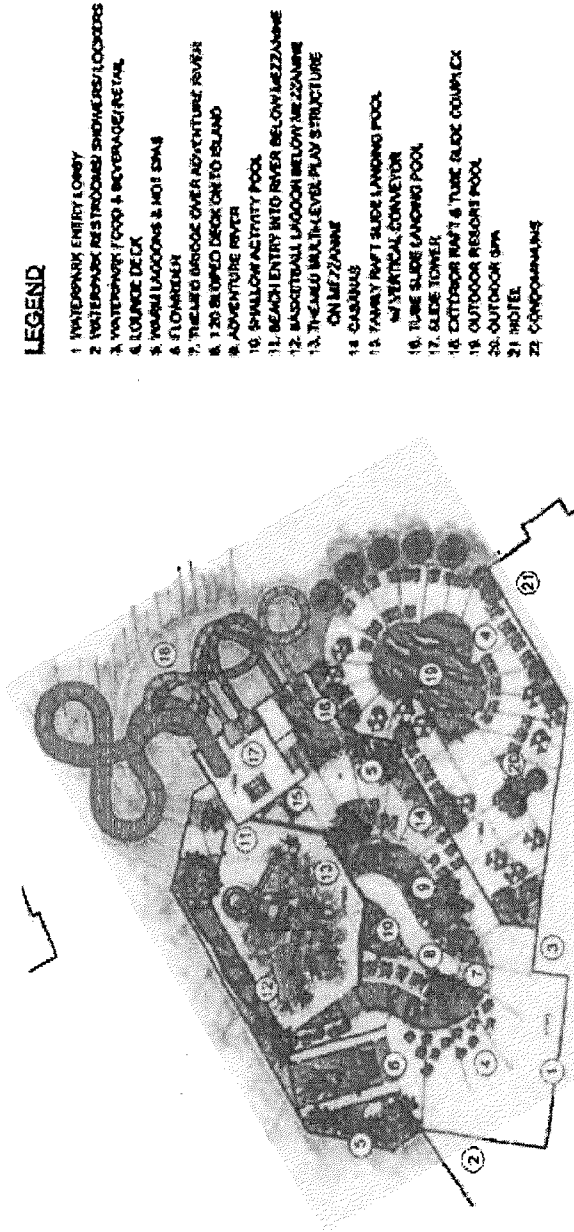
## INDOOR WATER PARK

Is the creative design work of Aquatic Development Group from the Albany, New York region. They are one of the premier water park design and development companies in the world, with over 90 facilities in operation or development at the present time. The Water Park component of the Jay Peak project will be a very significant weatherproof amenity operating 12-14 hours per day. It will accommodate 800 guests at one time and up to 2,400 in a full day of typical use.

The approximately 33,000 sq ft. multi-Level, multi-Slide, Indoor Water Park offering exhilarating waterslides, lagoons and activity features will also house the games arcade, and water park eatery, and be designed ensure a perfect fit with the existing surroundings. With a roofing system that combines exceptional light transmission and high thermal properties with unmatched beauty and elegance and can incorporate solar shading enabling the roof to be turned to the ideal climate as the sun moves across the sky. With thermal insulating properties it may be 28 degrees or less and snowing outside while inside children are riding the lazy river, flow boarders are catching waves and adults are enjoying the warm waters and lounging facilities, while palm trees and other tropical plants form a natural canopy high above. One wall of the building will have a removable sliding wall so in summer months the outdoor pool and patio can adjoin the water park. Snack bar and family arcade will be a component feature of the park layout

An indoor water park is the perfect way for hotels and ski resorts to minimize seasonality and keep valuable employees at work bringing the beauty of the surrounding vistas indoors and will maximize the project's potential while developing the greatest entertainment impact and value possible.

Hotels with indoor water parks historically fill rooms almost 100% every weekend and school break all year long, and may extend their peak seasons from 100 days to almost year round.



Conceptual Sketch - Indoor Water Park

## INDOOR WATER PARK PROJECTED INCOME

JAY PEAK EB-5 EXPANSION PROJECT  
PROJECTED STATEMENT OF INCOMEPhase II Indoor Water Park 32,000 square feet  
\*\*See Important Notes Forward Looking Statements.

YEAR OF OPERATION	YEAR1	YEAR2	YEAR3	YEAR4	YEAR5	YEAR6	YEAR7	YEAR8	YEAR9	YEAR10
<b>WATER PARK CAPACITY</b>	250	250	250	250	250	250	250	250	250	250
<b>ANNUAL VISITORS PROJECTED</b>	122,176	127,459	148,750	152,311	155,900	159,701	163,535	167,465	171,493	175,622
<b>HOTEL GUESTS</b>	35,495	39,045	58,567	60,324	62,134	63,998	65,918	67,896	69,932	72,030
Average Admission Charge	\$25	\$25.88	\$26.78	\$27.72	\$28.69	\$29.69	\$30.73	\$31.81	\$32.92	\$34.07
<b>OTHER RESORT GUESTS</b>	98,881	88,415	90,183	91,986	93,766	95,703	97,617	99,569	101,561	103,592
Average Admission Charge	\$38	\$37.26	\$38.56	\$39.91	\$41.31	\$42.76	\$44.25	\$45.80	\$47.41	\$49.06
<b>REVENUES</b>										
<b>HOTEL GUESTS</b>	\$887,383	\$1,010,288	\$1,568,469	\$1,672,068	\$1,782,508	\$1,900,240	\$2,026,761	\$2,159,662	\$2,302,190	\$2,454,250
<b>OTHER RESORT GUESTS</b>	\$3,120,514	\$3,294,326	\$3,477,820	\$3,671,535	\$3,876,039	\$4,091,935	\$4,319,355	\$4,560,471	\$4,814,490	\$5,082,657
	\$4,007,897	\$4,304,612	\$5,046,289	\$5,343,601	\$5,658,545	\$5,992,175	\$6,345,807	\$6,720,023	\$7,116,680	\$7,536,907
<b>DIRECT COSTS</b>										
<b>MANAGEMENT FEE</b>										
<b>LABOR</b>	\$1,102,172	\$1,183,766	\$1,337,266	\$1,385,336	\$1,414,836	\$1,498,044	\$1,586,402	\$1,680,006	\$1,779,170	\$1,884,227
<b>OTHER VARIABLE EXPENSES</b>	\$981,777	\$988,538	\$1,185,878	\$1,282,464	\$1,414,836	\$1,498,044	\$1,586,402	\$1,680,006	\$1,779,170	\$1,884,227
<b>TOTAL FEE</b>	\$2,003,949	\$2,152,306	\$2,523,144	\$2,671,800	\$2,829,273	\$2,996,087	\$3,172,803	\$3,360,012	\$3,558,340	\$3,768,453
<b>GROSS PROFIT</b>	\$2,003,948	\$2,152,306	\$2,523,144	\$2,671,800	\$2,829,273	\$2,996,087	\$3,172,803	\$3,360,012	\$3,558,340	\$3,768,453
<b>EMPLOYEES (FTE) (Avg Wage \$10 p/h \$20,930 incl EC)</b>	53	57	64	66	68	72	76	80	85	90
<b>INDIRECT COST &amp; ADMIN. EXPS.</b>										
ELECTRICITY, AC & HEATING	\$480,943	\$516,553	\$555,092	\$587,796	\$622,440	\$659,139	\$698,017	\$740,201	\$787,001	\$832,214
<b>MAINTENANCE &amp; REPAIRS</b>	\$133,107	\$151,543	\$213,694	\$234,413	\$256,501	\$280,048	\$305,150	\$331,910	\$360,438	\$390,850
<b>MARKETING &amp; PROMOTION (incl. In Mar. Fee)</b>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>PROPERTY TAXES AND INSURANCE</b>	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000	\$48,000
<b>OTHER ADMINISTRATIVE COSTS</b>	\$44,369	\$50,514	\$78,423	\$83,003	\$89,125	\$96,201	\$97,189	\$97,180	\$103,589	\$110,441
	\$706,424	\$766,611	\$895,209	\$1,053,813	\$1,116,066	\$1,177,449	\$1,242,376	\$980,792	\$1,039,037	\$1,101,506
<b>EBITDA</b>	\$1,297,524	\$1,385,695	\$1,527,935	\$1,617,988	\$1,713,206	\$1,818,639	\$1,930,478	\$2,059,720	\$2,519,303	\$2,666,948
<b>RESERVE FOR REPLACEMENT</b>	\$90,158	\$107,815	\$126,157	\$133,690	\$169,756	\$179,785	\$190,388	\$201,601	\$213,500	\$226,107
<b>PROJ. EARNINGS - WATER PARK</b>	\$1,217,366	\$1,278,080	\$1,401,778	\$1,484,398	\$1,543,450	\$1,638,853	\$1,740,100	\$2,178,119	\$2,305,802	\$2,440,840

JAY PEAK PHASE 2 INDOOR WATER PARK  
DETAIL ASSUMPTIONS AND USAGE RATES

Hotel Phase 1 57 Suites  
INDOOR WATER PARK - CAPACITY

800 MAX GUESTS

"" NOTE: EXCLUDES INCREASE USAGE FOR PHASE 2: 120 HOTEL SUITES ALTHOUGH PHASE N GUESTS TO HAVE PRIORITY OVER OUTSIDE USERS

HOTEL SUITE - Phase 1				HOTEL GUESTS Phase 1				OUTSIDE USERS			
DAYS	PERCENT	DAYS		UNIT	OCCUPIED	OCCUPIED	RATE OF	DAYS	OCCUPIED	PERCENT	OCCUPIED
		AVAIL.	OCCUPIED								
#	%	#	#		#	#	%	#	#	%	#
PRIME TIME											
8	100%	8	2		458	1,368	90%	1,234	3,376	60%	2,028
5	90%	5	2		257	770	90%	693	2,299	60%	1,379
5	85%	4	2		242	727	90%	654	2,394	60%	1,436
5	100%	5	2		285	855	90%	770	2,110	60%	1,268
3	80%	2	3		137	410	90%	369	2,986	60%	1,792
24	90%	22	2		1,234	3,694	90%	3,324	11,035	60%	6,621
20	90%	18	2		1,028	3,078	90%	2,770	9,196	60%	5,518
10	90%	9	3		513	1,539	90%	1,395	4,598	60%	2,759
80		73			4,147	12,440		11,196	36,501		22,796
OTHER PERIODS											
45	65%	29	3		1,653	4,959	70%	3,471	28,062	30%	8,419
40	65%	28	2		1,482	4,446	70%	3,112	24,804	30%	7,483
20	65%	13	3		741	2,223	70%	1,556	15,994	30%	4,798
105		69			3876	11628		8140	69,000		20,700
LOW OCCUPANCY PERIODS											
175	60%	105	3		5,985	17955	90%	16,160	106,325	30%	32,078
5					0	0	0%	0	4,000	0%	0
CLEANING DAYS											
365	68%	247			14,008	42,023		35,495	216,428		75,574
TOTAL											
				TOTAL PERSON USAGE				TOTAL PERSON USAGE			
				CASUAL DAY VISITORS				CASUAL DAY VISITORS			
				11,107				111,069			
				122,179				1,221,779			
				197,800				1,978,000			
(at management discretion)											
TOTAL PERSON DAYS CAPACITY											

## INDOOR ICE ARENA

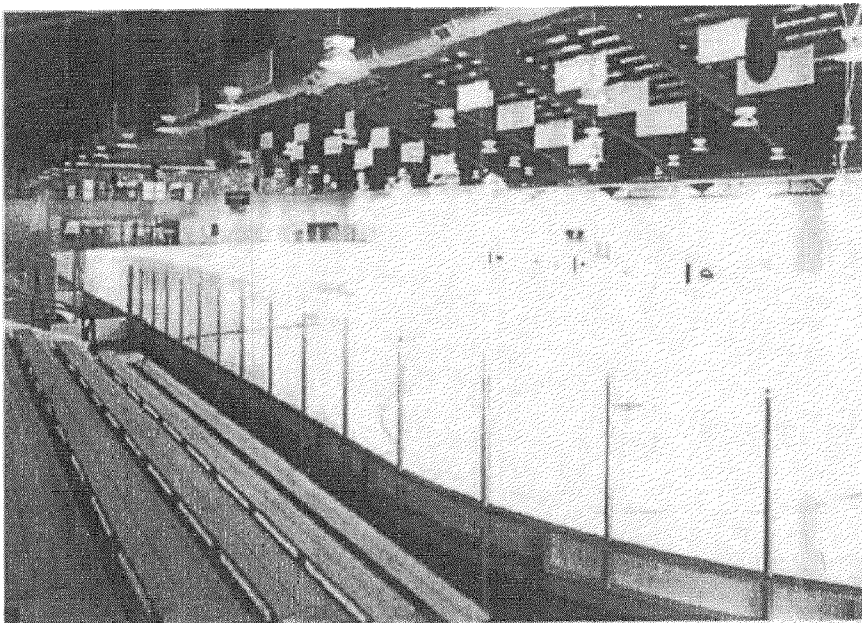
Jay Peak is located as close to the Canadian border as any resort in America. Skating, hockey and curling are among Canada's most popular sports along with skiing. With 25,000,000 Canadians living with a 7 hr drive of Jay Peak, this type of amenity is not available at other ski resorts. Having this facility at Jay Peak will drive Canadian families to often choose Jay Peak over other resorts.

In New England hockey and skating are very popular as well. Like the water park, the ice arena is weatherproof and will be a very popular year-round recreational amenity. Hockey camps, curling matches and figure skating schools will join with winter recreational skating from the Jay Peak resort guests looking to enjoy another sport and pastime. Our programs and events will attract all ages; provide the recreational activities of public skating, hockey, youth programs and special events throughout the year. The cafe will offer hot and cold food and plenty of seating for all the family. It will also feature a Birthday Party Room, to include skating and a birthday cake. In addition there will be a comprehensive skate shop on site, for all your skating and ice hockey needs. No indoor skating facility exists in Orleans County so it is projected that local school usage will be substantial. The Skating Arena will have:

1. Hockey-sized rink – NHL
2. 2 Curling sheets
3. Snack bar/party area
4. Skate rental and locker area
5. Bleacher seating for 500
6. 200 feet from Phase II Hotel

The 30,000+ square foot indoor twin ice facility arena will be open all year and welcome visitors 7 days a week for public skating, group courses, schools programs, discos, private lessons and birthday parties. The arena will be a vibrant place for family and friends; to have fun and enjoy exercise while ice skating. It will be home ice to local school hockey teams from northern Vermont and to major youth hockey/skate associations regionally.

*\*\* Curling is a highly popular team sport with similarities to bowls and bocce, played on a rectangular sheet of carefully prepared ice by two teams of four players each. The object of the game is to place more rocks near the center of a target painted on the ice than the opposing team. Teams take turns sliding these heavy, polished granite stones down the ice towards the target (which is called the house). Two sweepers with brooms accompany each rock and use timing equipment and their best judgment along with direction from their other teammates to help direct the stones to their resting place. The complex nature of stone placement and shot selection has led some to refer to curling as "chess on ice".*



Conceptual Image – Indoor Ice Arena

## INDOOR ICE ARENA: 10 YEAR INCOME SUMMARY

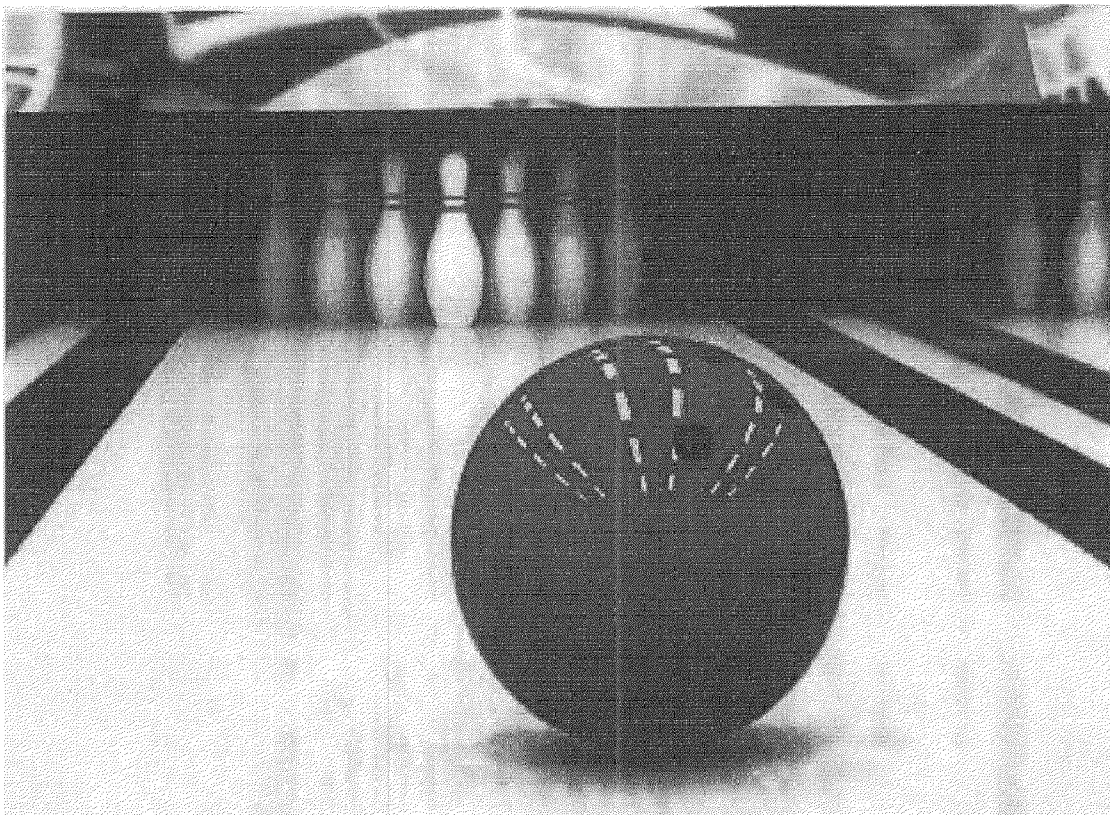
### JAY PEAK EB-5 EXPANSION PROJECT PROJECTED STATEMENT OF INCOME

INDOOR ICE ARENA  
\*\*See Important Note: Forward Looking Statements\*\*

YEAR OF OPERATIONS	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
<b>REVENUES</b>	\$1,099,836	\$1,232,869	\$1,284,512	\$1,359,238	\$1,427,200	\$1,498,560	\$1,573,488	\$1,652,162	\$1,734,770	\$1,821,509
Management Fee	\$362,946	\$369,861	\$388,354	\$407,771	\$428,160	\$449,568	\$472,046	\$495,849	\$520,431	\$546,453
<b>EMPLOYEES (FTE)</b>	17	18	19	19	20	21	23	24	25	26
(Avg. Wage \$20.930)										
Other Variable Expenses	\$186,972	\$246,574	\$288,902	\$271,843	\$285,440	\$299,712	\$314,608	\$330,432	\$346,954	\$364,302
<b>TOTAL FEE</b>	\$649,918	\$616,435	\$677,256	\$679,619	\$713,600	\$749,280	\$786,744	\$826,081	\$867,385	\$910,755
<b>GROSS PROFIT</b>	\$549,918	\$616,435	\$607,256	\$679,619	\$713,600	\$749,280	\$786,744	\$826,081	\$867,385	\$910,755
<b>INDIRECT COSTS</b>										
Overheads										
Utilities	\$130,000	\$133,500	\$137,917	\$142,059	\$146,316	\$150,706	\$155,227	\$159,884	\$164,680	\$169,621
Prop Taxes	\$24,000	\$24,720	\$25,462	\$26,225	\$27,012	\$27,823	\$28,657	\$29,517	\$30,407	\$31,315
Insurance	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000
Maintenance and repairs	\$109,884	\$123,287	\$129,451	\$135,924	\$142,720	\$149,856	\$157,349	\$165,216	\$173,477	\$182,151
Other Admin Costs	\$54,992	\$61,843	\$64,726	\$67,942	\$71,360	\$74,928	\$78,674	\$82,608	\$86,739	\$91,075
<b>TOTAL</b>	\$336,975	\$361,350	\$375,555	\$390,166	\$406,408	\$424,312	\$443,907	\$465,225	\$473,290	\$492,161
<b>TOTAL COSTS</b>	\$896,893	\$977,985	\$1,022,812	\$1,069,785	\$1,119,008	\$1,170,592	\$1,224,651	\$1,281,306	\$1,340,683	\$1,402,916
<b>PROJECTED NET INCOME</b>	\$212,943	\$254,884	\$271,701	\$289,453	\$308,192	\$327,968	\$348,837	\$370,856	\$394,087	\$418,593
<b>REVENUE BREAKDOWN ANALYSIS</b>										
30,000 sq ft Arena - Two Ice incl. curling lanes Ice Rental 300 days 12 hours \$180 per hr. Public \$5.00 per session 1 hr										
Gross Revenues - Year 1	Ice Rental	Public	Figure	Learn	Sales Rental	Food	Pro Shop	Video	Misc.	Total
	\$648,000	\$168,852	\$21,997	\$43,983	\$43,993	\$75,000	\$50,000	\$25,000	\$25,000	\$1,098,836

## BOWLING CENTER

Although Jay Peak is a very successful ski resort, many times, even in peak season, weather impact can affect occupancy. We sought opportunities that would help us expand into a year-round destination, insulate the Resort from the impact of weather, create weather-proof vacations and capture year-round revenues. It was considered a Bowling Center will do just that and provide much needed indoor family recreational activity. The facility will be a full service bowling Center of 12 lanes with computerized scoring combining entertainment at a competitive price. Up to date equipment and enhanced lighting and sound systems will provide for an exciting facility and add to the activities available for our all season resort. Complementary products such as video games, pool tables and dart boards will all be available and fast food services will be offered on site. While new center development requires a substantial capital investment, its low inventory requirements and strong cash flow, provide the opportunity for a fast and substantial return on investment.



Conceptual Image – Bowling Center

**BOWLING ALLEY: INCOME SUMMARY****JAY PEAK EB-5 EXPANSION PROJECT  
PROJECTED STATEMENT OF INCOME****BOWLING ALLEY - 12 LANES**

\*See Important Note: Forward Looking Statements

YEAR OF OPERATIONS	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
REVENUES (see analysis below)	\$985,682	\$1,015,252	\$1,045,710	\$1,077,081	\$1,109,394	\$1,142,676	\$1,176,956	\$1,212,265	\$1,248,632	\$1,286,091
Management Fee										
Labor	\$344,989	\$355,338	\$365,999	\$376,978	\$388,288	\$399,936	\$411,935	\$424,293	\$437,021	\$450,132
EMPLOYEES (FTE)	18	17	17	18	19	19	20	20	21	22
(Avg. Wage \$20930)										
Other Variable Expenses	\$147,852	\$152,288	\$156,857	\$161,562	\$166,409	\$171,401	\$176,543	\$181,840	\$187,295	\$192,914
TOTAL FEE	\$492,841	\$507,626	\$522,855	\$538,541	\$554,697	\$571,338	\$588,478	\$606,132	\$624,316	\$643,046
GROSS PROFIT	\$492,841	\$507,626	\$522,855	\$538,541	\$554,697	\$571,338	\$588,478	\$606,132	\$624,316	\$643,046
INDIRECT COSTS										
Overheads										
Utilities	\$67,500	\$69,526	\$71,611	\$73,759	\$75,972	\$78,261	\$80,599	\$83,016	\$85,507	\$88,072
Prop Taxes	\$24,000	\$24,720	\$25,462	\$26,225	\$27,012	\$27,823	\$28,657	\$29,517	\$30,402	\$31,315
Insurance	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000	\$18,000
Maintenance and repairs	\$49,284	\$50,763	\$52,286	\$53,854	\$55,470	\$57,134	\$58,848	\$60,613	\$62,432	\$64,305
Other Admin Costs	\$98,588	\$101,525	\$104,571	\$107,708	\$110,939	\$114,268	\$117,696	\$121,226	\$124,853	\$128,609
TOTAL	\$257,352	\$264,533	\$271,929	\$279,547	\$287,393	\$295,475	\$303,799	\$312,373	\$321,204	\$330,300
TOTAL COSTS	\$750,193	\$772,159	\$794,784	\$818,087	\$842,090	\$866,813	\$892,277	\$918,505	\$945,521	\$973,346
PROJECTED NET INCOME	\$235,489	\$243,093	\$250,976	\$258,994	\$267,304	\$275,863	\$284,679	\$293,759	\$303,112	\$312,745
REVENUE BREAKDOWN ANALYSIS	10500 Lane Usage p.a.									
Average Price / Game \$4.25 12 LANES										
Gross Revenues - Year 1		Bowling	Shoe Rental	Pro Shop	Arcade	Vending	Lounge	Snack Bar	Misc.	Total
	\$535,500	\$53,550	\$23,956	\$107,100	\$107,100	\$21,294	\$133,088	\$107,100	\$4,094	\$985,682



## GOLF CLUBHOUSE

The new approximately 24,000 sq. ft. clubhouse will be a four season facility with a 200 person restaurant and a grill room for 80 guests to welcome some of the 2,000 on-property guests looking for a fine evening out. The building itself will house golf cart equipment in the basement, Pro Shop and restroom/lockers on the ground floor and a 270° veranda, restaurant and bar on the top floor. Each floor will have approximately 8,000 sq. ft. Views from the 270 degree verandah deck will be stunning each season but especially in summer and fall. In golf season it will serve our golfer well but will also be a great special function venue for weddings, golf tournaments, etc., and in winter it will be the cross country ski and snow shoe center and we will build a maple sugar producing shack near the clubhouse for sugar on snow parties so popular in Vermont and Quebec in March and April. A maple sugaring operation will be located nearby the Club House and will provide guests a very unique Vermont experience in February, March and April of each year. Sugar-on-snow and Vermont Maple products will be a feature of the restaurant and shop of the Club House. The Maple Shack will actually produce maple sugar and maple syrup having its own evaporator. The dining facilities will be a big hit in winter as we will create a steak and seafood menu with a Vermont products feel. The golf pro shop in summer will be a winter sports shop for cross country skiing and snowshoe activity. Snowmobile rentals for winter and mountain biking for summer are also being considered.



Jay Peak Resort ~ Championship Golf Course

## GOLF CLUBHOUSE INCOME SUMMARY

### JAY PEAK EB-5 EXPANSION PROJECT PROJECTED STATEMENT OF INCOME

GOLF CLUBHOUSE  
\*See Important Note: Forward Looking Statements

YEAR OF OPERATIONS	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
<b>REVENUES (see analysis below)</b>	\$2,800,294	\$3,080,323	\$3,172,733	\$3,287,915	\$3,365,953	\$3,466,931	\$3,570,939	\$3,678,067	\$3,788,409	\$3,902,062
Management Fee 75%										
EMPLOYEES (FTE)	60	60	68	70	72	75	77	79	81	84
(Avg. Wage \$20.830)										
Other Variable Expenses	\$940,080	\$924,567	\$951,820	\$980,375	\$1,009,790	\$1,040,979	\$1,071,262	\$1,103,420	\$1,136,523	\$1,170,619
<b>TOTAL FEE</b>	\$2,100,221	\$2,310,243	\$2,379,550	\$2,450,836	\$2,524,484	\$2,600,183	\$2,678,204	\$2,758,550	\$2,841,307	\$2,928,546
<b>GROSS PROFIT</b>	\$700,074	\$770,081	\$793,183	\$816,979	\$841,493	\$865,743	\$892,735	\$919,517	\$947,102	\$976,515
<b>INDIRECT COSTS</b>										
Overhead's										
Utilities	\$98,010	\$107,911	\$111,056	\$114,377	\$117,808	\$121,343	\$124,983	\$128,732	\$132,594	\$136,572
Prop Taxes	\$30,000	\$30,900	\$31,827	\$32,782	\$33,765	\$34,778	\$35,822	\$36,896	\$38,003	\$39,143
Insurance	\$24,000	\$24,800	\$24,000	\$24,000	\$24,000	\$24,000	\$24,000	\$24,000	\$24,000	\$24,000
Maintenance and repairs	\$56,006	\$61,806	\$63,455	\$65,058	\$67,319	\$69,339	\$71,419	\$73,561	\$75,768	\$78,041
Other Admin Costs	\$84,009	\$92,410	\$95,182	\$98,037	\$100,379	\$104,008	\$107,178	\$110,347	\$113,652	\$117,062
<b>TOTAL</b>	\$292,025	\$316,727	\$326,509	\$334,555	\$343,871	\$353,467	\$363,351	\$373,532	\$384,018	\$394,819
<b>TOTAL COSTS</b>	\$2,392,245	\$2,626,970	\$2,705,059	\$2,795,401	\$2,869,238	\$2,953,686	\$3,041,558	\$3,132,082	\$3,225,325	\$3,321,385
<b>PROJECTED NET INCOME</b>	\$408,049	\$453,353	\$467,674	\$482,424	\$497,617	\$513,265	\$529,383	\$546,985	\$565,084	\$580,697
<b>REVENUE BREAKDOWN/ANALYSIS</b>										
Restaurant Grill 225 seats Pub 80 person capacity										
Golf Shop 60 person capacity										
Golf Shop 1600 sq ft										
<b>Gross Revenues - Year 1</b>										
Restaurant Grill	\$1,800,000									
Pub/Mini Grille	\$400,000									
Golf Shop	\$104,000									
Pro Shop	\$104,000									
Vending	\$21,284									
Fairlines Events	\$250,000									
Mini Golf	\$50,000									
Misc	\$26,000									
<b>Total</b>	\$2,800,294									

## GENERAL PARTNER

As the General Partner, Jay Peak Management Inc. will oversee construction and operate and manage the Hotel and the water park, ice arena, golf clubhouse and bowling center, using its reasonable best efforts to maximize occupancy rates and income in the Hotel. The General Partner will also negotiate third party agreements to construct the Hotel Building, the building that will house the Administrative Offices Unit (together with the Hotel Building, the "Condominium Buildings"), and the Ancillary Projects' buildings, submit the Condominium Buildings and land underneath to condominium ownership, and landscape the property adjoining all the buildings, and contribute Partnership funds to the costs thereof. All planning, permitting, bid management and quality control management of the buildings, including the Hotel and Ancillary Projects, as well as all management of affiliates will be borne by the General Partner. All authority, responsibilities and duties of the General Partner are more fully described in the Limited Partnership Agreement annexed hereto.

### Fees to General Partner and affiliated entities

#### General Partner's Management Compensation

Other than receiving its interest herein, being reimbursed for all of its expenses and costs incurred related directly or indirectly to the development of the project (including but not limited to permitting fees, professional fees and third party consultant fees), and receiving reimbursement for expenses and other costs incurred directly or indirectly by the General Partner to fulfill its duties hereunder, the General Partner shall not be entitled to compensation for its services rendered pursuant to the Limited Partnership Agreement. While maintaining overall control hereunder, the General Partner shall, however, delegate its duty to operate the Hotel and the Ancillary Projects to an Affiliate for compensation to be paid by the Partnership in an amount equal to fifty percent (50%) of the gross income of the Hotel and the Ancillary Projects, excepting for the Golf Clubhouse, where the compensation shall be 75% of the gross income, from which the Affiliate will pay all of the day to day operating, management and marketing costs of the Hotel and the Ancillary Projects, and ensure adequate staffing levels. In addition, the General Partner shall delegate its duty to supervise the construction of the project, including but not limited to the construction and build out of the project, to Jay Peak Inc. or another Affiliate for a management fee to be paid by the Partnership in an amount equal to fifteen percent (15%) of the overall cost of the Hotel, excluding the cost of the Hotel land acquisition.

#### General Partner's Compensation in the Event of a Sale or Other Disposition of Hotel

The General Partner or its Affiliate shall look to market and sell the Hotel on the timetable set forth in the Limited Partnership Agreement on the following terms of compensation: brokerage fees payable to General Partner or its designee of eight percent (8%) if whole condominium interests are sold (or the Hotel is sold as a single entity in its entirety) and fifteen percent (15%) if fractional interests are sold.

### Limitation of Liability of General Partner

Liability to Partnership and Limited Partners: The General Partner, and its Affiliates, and their officers, directors, agents, employees, representatives, attorneys, accountants and other persons operating on its behalf shall not be liable, responsible, or accountable in damages or otherwise (including attorneys fees and expenses) to the Limited Partners or to the Partnership for any acts performed in good faith and within the scope of authority of the General Partner, or its Affiliates if any of the General Partner's duties have been contractually delegated to them, pursuant to the Limited Partnership Agreement. (See Limited Partnership Agreement)

### Transactions with Related Parties

Jay Peak Management Inc. as General Partner will enter into contracts and or agreements with Jay Peak, Inc., an affiliate of the General Partner, all as more particularly described herein. (See Limited Partnership Agreement)

## Management Agreement

The Management Agreement will become effective as the Hotel and Ancillary Projects commence operations. The General Partner will retain Jay Peak, Inc. to manage the Hotel and related amenities for a period of 10 years and from year to year thereafter. Jay Peak, Inc. is entitled, pursuant to the management arrangement, to various fees as detailed elsewhere herein. Jay Peak Inc. is responsible for and shall pay all direct operating costs as more fully detailed herein and in said Management Agreement.

## Distributions to Investors

The net proceeds from the accommodations portion of the Hotel Suites project will be paid in arrears on a monthly basis. Net proceeds from the accommodations will be revenue on hand after typical operational expenses are paid, and any reserves made, or other funds withheld as deemed necessary by the General Partner. Typical expenses are among, but not limited to, the following: hotel suites employee labor, management fee, utility expenses and supplies and service costs typically required by a suite hotel of this type, and replacement reserves. (See Limited Partnership Agreement)

## Exit Strategies

The Jay Peak Hotel Suite project will take an estimated 18/24 months to construct. Beginning in the fourth quarter of 2013, or once all conditions have been removed under the EB-5 Program, whichever is the later, for all foreign investors who have invested into the Partnership, the General Partner shall review market conditions to determine if it is appropriate to market the Hotel and, if so, to decide upon a plan of disposition of the Hotel (which may, but need not, include the sale of fractional interests, subdivision of the Hotel into separate condominiums or other common interest ownership interests, and sale, or redemption by the Partnership, of Limited Partner Interests), to be managed and conducted exclusively by the General Partner or its designee on terms to be determined by General Partner in its sole discretion. If whole ownership sale of each individual suite results (or the Hotel is sold as a single entity in its entirety), an 8% sales commission will be paid the General Partner for facilitating these transactions. If quarter share or interval ownership is the product created to liquidate the 120 suites in the Hotel Suite project, then a 15% commission on sales will be paid to the General Partner for facilitating these sales. The General Partner or its affiliate will be the exclusive sales agent for these sales. The time of the sale of the suites themselves to the market will be determined by the General Partner and may be affected by the market conditions of the time and the business status of the Hotel Suites itself as well as the immigration needs of the original investors. (See Limited Partnership Agreement)

In the event that the General Partner institutes a plan, as described above, to market the Hotel referred to in this Offering, the General Partner will, as a condition of the sale, require purchasers to make their property interests available to commercially reasonable, on-going Hotel operations which will assist to maintain permanent employment created by this project.

## Jay Peak Management Team

Jay Peak is led by Bill Stenger who is a resort industry leader in Vermont and nationally. Mr. Stenger has been President of Jay Peak since 1987 and has been leader of the resort since 1985. Mr. Stenger is aided by other key quality corporate managers: Steve Wright - Vice President of Marketing, Sales and Hospitality; Jake Webster - Vice President of Development; Cheryl Ward - Food & Beverage Manager; Howard Nosek - Director of Golf Maintenance; Jaime Stenger - Retail and Golf Operations Director; Allyson Carpenter - Human Resources Director.

The Jay Peak team led by Bill Stenger has accomplished a great deal in the last dozen years. Skier visits have grown from 125,000 to over 300,000 due in part to accommodations construction - \$90,000,000 worth of Real Estate in the form of 200 new condominiums and town homes. Over \$7,000,000 in new ski lift facilities were installed in 2001 and most recently a new multi-million dollar architect designed Championship Golf Course heralded as one of the best courses in the Northeast was opened in 2007.

With these strategic investments made it sets the stage for the "Village Creation" that Phase I and Phase II of the Suite Hotels and amenities will represent.

When Phase I and II are completed, Jay Peak will be one of North America's most well designed and properly scaled four-season resorts located within an 8hr drive of over 100 million potential guests in eastern North America.

## Sales Strategy

The sales strategy for the Project has a captive market already in place and will harness the existing Jay Peak Resort booking system that has been critical to the success of the Resort. In addition the Resort has its own web site with on-line booking system, weather reports and advertising/promotion program that promotes the Resort's lodging.

Jay Peak Resort has over 4,000 acres in its operation. The combination of mountain forest and valley stream landscape makes Jay Peak one of the most scenic, natural and unspoiled resort settings of its kind anywhere in the world.

With this magnificent natural assistance as a back drop, the well planned and environmentally sensitive approach to the resort layout makes it a resort of the future and not a re-done effort to repair past mistakes.

The scale of the facilities and scope of the amenities planned will make Jay Peak a sought after destination for a broad market for years to come. Within 8hrs drive there are 100 million North Americans – 25 million Canadians and 75 million Americans. Numerous four lane highways lead to within 30 minutes of Jay Peak from Canada and the US.

World class skiing and golf make winter and summer exceptionally popular but with a quality spa, conference facilities, and indoor amenities (such as a water park, beauty center, and ice arena) the shoulder seasons of early spring and late fall will be as popular for vacationers than the peak seasons of winter and summer.

Jay Peak has a highly experienced Marketing, Sales and Reservations team that will leverage the unique array of recreational four-season assets into high occupancy and profitable results for the Phase II partners.

Jay Peak's website ([www.jaypeakresort.com](http://www.jaypeakresort.com)) is a vibrant, active site that offers online reservations and special vacation package promotions to a worldwide audience on a daily basis. Jay Peak and its staff also advertise and promote throughout regional radio, television, newspapers, and magazines as well as regional four-season travel shows and expositions. The Jay Peak marketing budget exceeds \$1,000,000.

With a dynamic product and a staff and marketing plan to match the fiscal performance of these new hotel phases will truly be exciting.

## Contingency Fees and Pre-Opening Working Capital

5% contingency fee will be budgeted to compensate for any cost overruns in construction related costs. In the event cost overruns exceed the contingency, the General Partner will be responsible for project cost engineering to keep the project within budget or to pay for cost overruns in excess of project budget. The investors will not be asked for additional funds in the event the project's actual cost exceeds the planned budget.

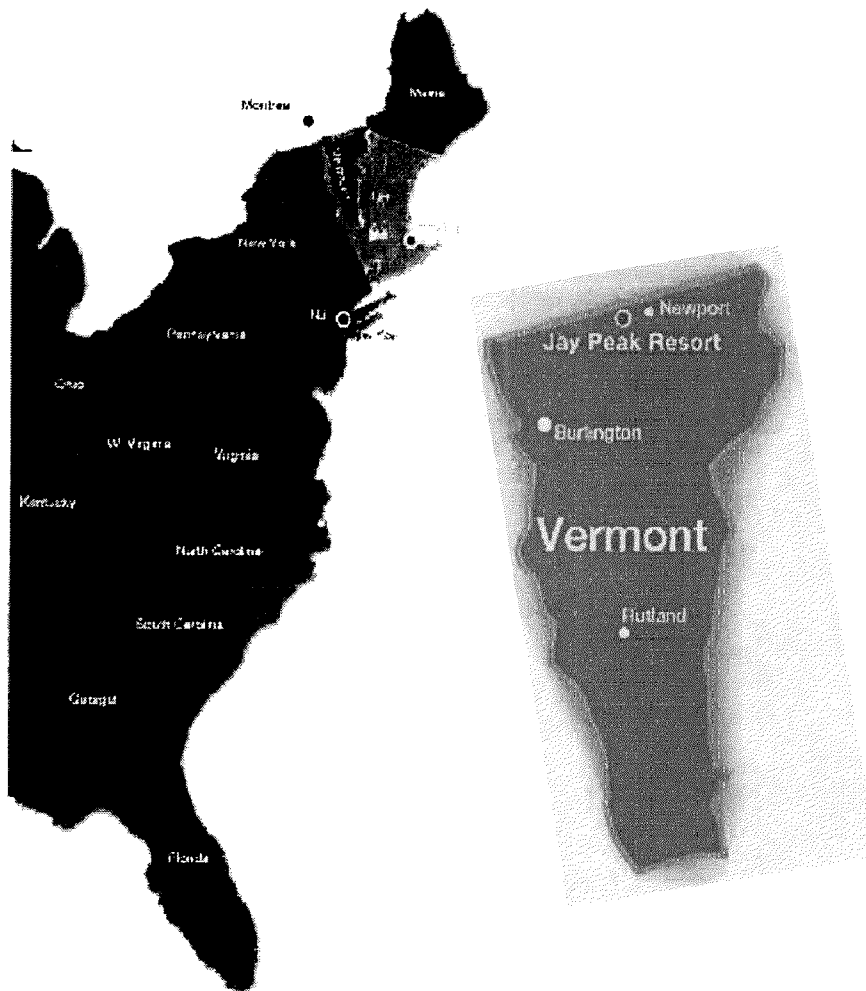
## Pre-opening Working Capital

Approximately one year prior to opening, Sales and Marketing programs will be undertaken to plan for the opening of the Hotel Suite project. These Marketing and Sales efforts will be instrumental in assuring business levels projected for the Hotel Suite accommodations are met. The Marketing and Sales expenses will consist of staff and administration personnel, advertising costs, website creation, maintenance costs, materials creation and distribution costs, utility costs as relates to the above. A budget of \$500,000 has been allocated for working capital.

## Land Purchase

The Resort Owner of Jay Peak will sell one or more parcels of land sufficient for the development of the Hotel building and building housing the Administrative Offices Unit to the Limited Partnership. (See Exhibit K - Purchase and Sale Agreement). The purchase price is \$7,800,000, however the Limited Partnership will receive a credit of \$3,600,000 for the shell floor and the shell exterior of administration building comprising two condominium Interests to be transferred back to the Resort Owner.

## LOCATION



END OF REPORT



# Jay Peak Hotel Suites Phase II L.P. Offering Memorandum

## Section 3 - Limited Partnership Agreement



## AGREEMENT OF LIMITED PARTNERSHIP OF JAY PEAK HOTEL SUITES PHASE II

### CONTENTS

Recitals .....	1
<b>ARTICLE I - Definitions and Rules of Construction .....</b>	<b>1</b>
Section 1.01. Definitions. ....	1
Section 1.02. Rules of Construction.....	6
Section 1.03. Imputation of Knowledge and Notice.....	7
Section 1.04. Successor Statutes and Agencies.....	8
<b>ARTICLE II - Partnership Business Purpose .....</b>	<b>8</b>
Section 2.01. Formation of Partnership. ....	8
Section 2.02. Partnership Name. ....	8
Section 2.03. Principal Place of Business.....	8
Section 2.04. Registered Agent. ....	8
Section 2.05. Title to Partnership Property. ....	8
Section 2.06. Purposes of the Partnership.....	8
Section 2.07. Partnership Term and Dissolution.....	9
Section 2.08. Filing of Certificate. ....	9
<b>ARTICLE III - Partnership Interests and Sources of Funds.....</b>	<b>9</b>
Section 3.01. Identity of Partners and Interests.....	9
Section 3.02. Capital Contributions.....	9
Section 3.03. Interest on Capital Contributions.....	11
Section 3.04. Service of Secured Debt.....	11
Section 3.05. Right to Require Repayment of Capital. ....	12
Section 3.06. Deficit Restoration.....	12
Section 3.07. No Third-Party Beneficiary.....	12
<b>ARTICLE IV - Right to Mortgage .....</b>	<b>12</b>
Section 4.01. Right to Mortgage. ....	12
<b>ARTICLE V - Rights, Powers and Obligations of the General Partner.....</b>	<b>13</b>
Section 5.01. Authority of General Partner. ....	13
Section 5.02. Limitations on the Authority of the General Partner.....	16
Section 5.03. Tax Matters Partner. ....	16
Section 5.04. Outside Activities. ....	17
Section 5.05. Liability to Partnership and Limited Partner.....	17
Section 5.06. Indemnification of General Partner.....	17
Section 5.07. Dealing with Affiliates: Fees.....	18
<b>ARTICLE VI - Rights and Obligations of the Limited Partner .....</b>	<b>18</b>
Section 6.01. Management of the Partnership.....	18
Section 6.02. Limitation on Liability of the Limited Partner.....	18
Section 6.03. Outside Activities. ....	19
Section 6.04. Inspection of the Project. ....	19
Section 6.05. Representations.....	19
<b>ARTICLE VII - Allocations of Profits and Losses .....</b>	<b>20</b>
Section 7.01. Maintenance of Capital Accounts. ....	20
Section 7.02. Profits and Losses. ....	21
Section 7.03. Special Allocations and Limitations.....	21
<b>ARTICLE VIII - Cash Distributions .....</b>	<b>21</b>



Jay Peak Hotel Suites Phase II Limited Partnership Agreement

Section 8.01. Distributions of Available Cash Flow .....	21
Section 8.02. Distributions of Proceeds from Capital Transaction.....	21
Section 8.03 Deficit Capital Accounts at Liquidation .....	22
Section 8.04 Limitation of Liability .....	22
Section 8.05 Death or Incapacity of Limited Partner .....	22
Section 8.06 Recourse of Limited Partners .....	23
Section 8.07 No Right to Property .....	23
<b>ARTICLE IX - Admission of Successor and Additional General Partners: Removal and Withdrawal of General Partner.....</b>	<b>23</b>
Section 9.01. Voluntary Withdrawal of General Partner/Admission of Successor or Additional General Partners.....	23
Section 9.02. Removal of General Partner/Admission of Additional General Partner Under Certain Circumstances .....	23
Section 9.03. Event of Bankruptcy of a General Partner .....	24
Section 9.04. Continuation of the Business of the Partnership.....	25
<b>ARTICLE X- Assignability of Interests of Limited Partner .....</b>	<b>25</b>
Section 10.01. Substitution and Assignment of a Limited Partner's Interest .....	25
Section 10.02. Withdrawal of Initial Limited Partner .....	26
Section 10.03. Sale or Other Disposition of Hotel .....	26
<b>ARTICLE XI - Management Compensation, Etc. ....</b>	<b>27</b>
Section 11.01. Management Compensation, Etc.....	27
<b>ARTICLE XII - Dissolution of Partnership .....</b>	<b>27</b>
Section 12.01. Dissolution.....	27
Section 12.02. Distribution of Partnership Assets .....	28
Section 12.03. Termination of the Partnership.....	28
<b>ARTICLE XIII - Accounting and Reports .....</b>	<b>28</b>
Section 13.01. Bank Accounts .....	28
Section 13.02. Books of Account .....	28
Section 13.03. Reports.....	28
Section 13.04. Tax Elections and Adjustments.....	29
<b>ARTICLE XIV - Meetings of the Partnership .....</b>	<b>29</b>
Section 14.01. Meetings of the Partnership .....	29
<b>ARTICLE XV - Amendments .....</b>	<b>29</b>
Section 15.01. Generally.....	29
Section 15.02. Signatures.....	30
<b>ARTICLE XVI - Miscellaneous Provisions.....</b>	<b>30</b>
Section 16.01. Notices, etc. ....	30
Section 16.02. Survival of Representations .....	30
Section 16.03. Entire Agreement .....	30
Section 16.04. Applicable Law .....	30
Section 16.05. Severability.....	30
Section 16.06. Binding Effect .....	30
Section 16.07. Counterparts .....	30
Section 16.08. No Implied Waiver.....	31
Section 16.09. Power of Attorney .....	31
Section 16.10. Partition.....	31
Section 16.11. Confidentiality.....	31
Section 16.12. Approval of Agreement .....	32
Section 16.13. No Guarantees or Redemption Rights.....	32
Section 16.14. Arbitration Clause .....	32
Section 16.15. Reimbursement of Expenses and Costs .....	32

Jay Peak Hotel Suites Phase II Limited Partnership Agreement

Section 16.16. Translation of Agreement, Etc. ....	32
Section 16.17. Gender Clause.....	32
<b>Exhibit A .....</b>	<b>34</b>

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**PARTNERSHIP AGREEMENT OF JAY PEAK HOTEL SUITES PHASE II  
L. P., A VERMONT LIMITED PARTNERSHIP**

The parties to this Agreement of Limited Partnership of Jay Peak Hotel Suites Phase II L.P. are:

**Jay Peak Management Inc.**, a Vermont corporation with its principal place of business at 4850 VT Route 242, Jay, Vermont 05859-9621, in its respective capacities as the General Partner and the Initial Limited Partner. As additional persons invest in the Partnership, and take such steps as are required hereunder and under the subscription agreements contained in the Confidential Memorandum (as defined in section 2.06(f)) to become Limited Partners, such additional Limited Partners shall become parties to this Agreement and shall be legally bound by the terms and conditions herein.

**Recitals**

**WHEREAS**, the parties desire to form a limited partnership to acquire title to and lease real estate and buildings from Jay Peak, Inc., a Vermont corporation with its principal place of business in Jay, Vermont (the "Resort Owner") at the Jay Peak Resort in Jay, Vermont (the "Resort"), for the purpose of constructing, operating and managing, as applicable, (a) a multi-storey building (and related improvements), which will comprise (i) one commercial condominium unit to be furnished, fit up and operated as an all suites hotel to be known as Jay Peak Hotel Suites Phase II, or a substantially similar name, to be owned and operated by the Partnership (the "Hotel"); and (ii) one other commercial condominium unit to be conveyed to, and with build-out, furnishing and fit up to be done by, the Resort Owner (the "Hotel Building Resort Owner Unit"), (b) a two-story building (and related improvements), which will comprise one commercial condominium unit to be furnished, fit up and operated as administrative offices and a grocery and deli (the "Administrative Offices Unit" and collectively with the Hotel Building Resort Owner Unit, the "Resort Owner Units"); and (c) a golf clubhouse, indoor ice arena, bowling center and an indoor water park, all of which premises and facilities will be leased for nominal consideration to, and operated by, the Partnership; and to do all other acts which may be necessary, incidental or conducive to the foregoing; and

**WHEREAS**, the parties expect to raise substantial funds from, among other investors, persons who are not United States' citizens or lawful permanent residents of the United States and who desire to become limited partners in the Partnership, and this Partnership may enable such investors to become eligible for admission to the United States of America as lawful permanent residents with their spouses and unmarried, minor children; and

**WHEREAS**, this Agreement sets forth the terms and provisions of the Partnership;

**NOW THEREFORE**, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

**ARTICLE I - Definitions and Rules of Construction**

**Section 1.01. Definitions.**

The following additional defined terms used in this Agreement shall have the meanings specified below:

"Accountants" - Mudgett Jennett & Krogh-Wisner P.C., 141 Main Street, Montpelier, Vermont 05602 (802-229-9193), or such other firm of independent certified public accountants selected by the General Partner that is reasonably acceptable to the Limited Partner.

"Act" - the Vermont Revised Uniform Limited Partnership Act (11 V.S.A. ch. 23) and any corresponding provision or provisions of succeeding law, as it or they may be amended from time to time.

"Adjusted Capital Account Deficit" - with respect to any Limited Partner, the deficit balance, if any,

in the Partner's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) credit to such Capital Account any amounts that such Partner is obligated to restore pursuant to any provision of this Agreement, is otherwise treated as being obligated to restore under Treasury Regulation Section 1.704-1 (b)(2)(ii)(c), or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5); and

(ii) debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulation Section 1.704-1 (b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Adjusted Capital Contribution" - with respect to each Partner, the aggregate capital contributed to the Partnership by such Partner reduced, from time to time, (i) by any return of a Capital Contribution made pursuant to the Agreement, and (ii) by the aggregate distributions of Net Proceeds from a Capital Transaction made to such Partner pursuant to the Agreement.

"Administrative Building" - the building that will contain the Administrative Offices Unit and be owned by the Resort Owner.

"Admission Date" - the date on which a Limited Partner is admitted to the Partnership, which shall be deemed to be the date of payment by the Limited Partner of its Capital Contribution, which except for the Initial Limited Partner shall be the date each Limited Partner's Capital Contribution is received by the Partnership, thereafter confirmed with a limited partnership certificate (or other evidence of ownership) being issued to the Limited Partner.

"Affiliate" - as to the General Partner, any Person who directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control of the General Partner, including but not limited to the Resort Owner.

"Agreement" - this Agreement of Limited Partnership, including the Recitals and all of the exhibits attached hereto and made a part hereof, as amended and in effect from time to time.

"Available Cash Flow" - funds provided from operation of the Partnership, without deductions for payments made to service Secured Debt and for depreciation, but after deducting funds used to pay all expenses and other debts of the Partnership, including administrative operational expenses, debt payments other than Secured Debt, capital improvements and less the amount set aside by the General Partner, in the exercise of its sole discretion, for reserves.

"Bowling Center" - the multi-lane bowling alley and related services to be constructed on Resort Land and leased, together with furniture, equipment and fixtures located or installed therein, for nominal consideration to, and operated by, the Partnership for a period of time not to exceed ten (10) years as set forth in a separate lease between the Partnership and Resort Owner (the "Bowling Center Lease").

"Buildings" – the improvements to be constructed by the Partnership on the Partnership Property or Resort Land that will include the Hotel Building, Administrative Building, Clubhouse, Bowling Center, Ice Arena and Water Park.

"Capital Account" - the capital account maintained by the Partnership for each Partner, determined in accordance with Section 7.01.

"Capital Contribution" - the total amount of cash or any cash equivalents or property (net of liabilities and commitments secured by such contributed property that the Partnership may have assumed) contributed or agreed to be contributed to the Partnership by each Partner, including all adjustments thereto, as provided in this Agreement.

"Capital Transaction" - the sale or other disposition of all or substantially all of the Partnership Property in a single transaction or a series of related transactions, other than the initial intended conveyance to Resort Owner of the Resort Owner Units.

"Certificate" - the certificate of limited partnership for the Partnership, as it may be amended from time to time, that is prepared and filed in accordance with the Act.

"Clubhouse" – the multi-story golf clubhouse, including such amenities by example as locker room(s), cart storage room, pro shop and eating and drinking facilities, to be constructed on Resort Land and leased, together with furniture, equipment and fixtures located or installed therein, for nominal consideration to, and operated by, the Partnership for a period of time not to exceed ten (10) years as set forth in a separate lease between the Partnership and Resort Owner (the "Clubhouse Lease").

"Code" - the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

"Condominium Regime" – the condominium project at the Resort developed under Vermont law and comprising the Hotel, the Hotel Building Resort Owner Unit and the Administrative Offices Unit (collectively, the "Condominium Units"), together with common elements and limited common elements, as more specifically described in the Declaration of Condominium.

"Consent of the General Partner" - the written consent or approval of the General Partner, which shall be obtained prior to the taking of any action for which it is required hereunder; if there is more than one General Partner, "Consent of the General Partner" shall require the affirmative consent of General Partners holding at least a majority of the aggregate Interests of the General Partners.

"Consent of the Limited Partner" - the written consent or approval of the Limited Partner, which shall be obtained prior to the taking of any action for which it is required hereunder; if there is more than one Limited Partner, "Consent of the Limited Partner" shall require the affirmative consent of sixty-six and two-thirds percent (66.67%) of the Limited Partners.

"Declarant" – Jay Peak Hotel Suites Phase II L.P., as will be set forth more specifically in the Declaration of Condominium.

"Declaration of Condominium" – the legal document that will govern the operation of the Condominium Regime, to be finalized and recorded in the Land Records of the Town of Jay, Vermont once the Condominium Units are substantially completed.

"Environmental Hazard" - any hazardous or toxic substance, waste or material, or any other substance, pollutant, or condition that poses a risk to human health or the environment, including,

but not limited to: (a) any "hazardous substance" as that term is defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. as amended, (b) petroleum in any form, lead-based paint, asbestos, urea formaldehyde insulation, methane gas, polychlorinated biphenyls ("PCBs"), radon, or lead in drinking water, except for ordinary and necessary quantities of office supplies, cleaning materials and pest and insect control supplies stored in a safe and lawful manner and petroleum products contained in motor vehicles or otherwise properly stored; (c) any underground storage tanks not properly registered with the appropriate government agencies; or (d) accumulations of debris, mining spoil or spent batteries, except for ordinary trash and garbage stored in receptacles for regular removal.

"Event of Bankruptcy" - with respect to any Person,

(1) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for such Person or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(2) the commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for such person or for any substantial part of its property, or the making by such Person of any assignment for the benefit of creditors, or the taking of action by such Person in furtherance of any of the foregoing;

(3) the commencement against such Person of an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy insolvency or similar laws which has not been vacated, discharged or bonded within sixty (60) consecutive days;

(4) the admission by such Person of its inability to pay its debts as they become due; or

(5) such Person becoming "insolvent" by the taking of any action or the making of any transfer or otherwise, as insolvency is or may be defined pursuant to federal bankruptcy laws, the Uniform Fraudulent Transfer Act, any state or federal act or law, or the ruling of any court.

"Event of Default" - as set forth in Section 9.02(b).

"Final Determination" - with respect to any issue, the earliest to occur of (a) a decision, judgment, decree, or other order being issued by any court of competent jurisdiction, which decision, judgment, decree, or other order has become final (i.e., all allowable appeals filed by the parties to the action have been exhausted or the time for such appeals has expired); (b) the IRS having entered into a binding agreement with the Partnership or having reached a final administrative or judicial determination which, whether by law or agreement, is not subject to appeal; or (c) the expiration of the applicable statute of limitations.

"Fiscal Year" - the calendar year or such other year that the Partnership is required by the Code to use as its taxable year.

"Gain" - the income and gain of the Partnership for federal income tax purposes arising from a sale or other disposition of all or any portion of the Partnership Property.

"General Partner" - Jay Peak Management Inc. and any additional or substitute general partners of the Partnership named in any duly adopted amendment to this Agreement; if there is more than one general partner, "General Partner" shall refer collectively to all such general partners and their successors.

"Hotel Building" - the building that will be constructed by the Partnership on Hotel Land and contain the Hotel and Hotel Building Resort Owner Unit.

"Hotel Land" - the land to be acquired by the Partnership from the Resort Owner and on which the Hotel Building and Administrative Building will be constructed.

"Ice Arena" - the indoor ice rink and related services to be constructed on Resort Land and leased, together with furniture, equipment and fixtures located or installed therein, for nominal consideration to, and operated by, the Partnership for a period of time not to exceed ten (10) years as set forth in a separate lease between the Partnership and Resort Owner (the "Ice Arena Lease").

"Initial Limited Partner" - Jay Peak Management Inc.

"Interest" - as to any Partner, the Partner's right, title, and interest in the Partnership, including any and all assets, distributions, losses, profits and shares of the Partnership, whether cash or otherwise, and any other interests and economic incidents of ownership whatsoever of such Partner in the Partnership.

"IRS" - the Internal Revenue Service of the United States of America.

"Leases" - collectively, the Bowling Center Lease, the Clubhouse Lease, the Ice Arena Lease and the Water Park Lease.

"Limited Partner" - Jay Peak Management Inc., as the Initial Limited Partner, and any additional or substitute limited partner or partners of the Partnership as provided herein, in each such person's capacity as a limited partner. If there is more than one limited partner, "Limited Partner" or "Limited Partners" shall refer collectively to all such limited partners.

"Limited Partnership Interest" - "Interest" or "Limited Partnership Interest" or "Partner Interest" means the ownership interest of a Partner in the Partnership at any particular time including the right of such Partner to any and all benefits to which such Partner may be entitled as provided in the Agreement and under the Act, together with the obligations of such Partner to comply with all the terms and provisions of the Agreement and Act.

"Loss" - the loss of the Partnership for federal income tax purposes arising from a sale or other disposition of all or any portion of the Partnership Property. If the value at which an asset is carried on the books of the Partnership pursuant to the capital account maintenance rules of Treasury Regulation Section 1.704-1(b) differs from its adjusted tax basis and loss is recognized from a disposition of such asset, the loss shall be computed by reference to the asset's book basis rather than its adjusted tax basis.

"Net Cash Flow" - the amount, determined for any Fiscal Year or portion thereof, equal to the excess, if any, of Cash Flow over the sum of the amounts payable from Cash Flow in such year described in Section 8.01.

"Net Loss" - the net loss of the Partnership for federal income tax purposes for each Fiscal Year.

"Net Profit" - the taxable income of the Partnership for federal income tax purposes for

each Fiscal Year.

"Notice" - a writing containing the information required by this Agreement and sent by registered or certified mail, postage prepaid, return receipt requested, or sent by commercial delivery service, by hand delivery, or by telecopy, paid for by the sender, to a Partner at the last address or addresses designated for such purpose by such Partner in Section 16.01 or as provided therein, the date of receipt of such registered mail or certified mail or the date of actual receipt of such writing by commercial delivery service, hand delivery or telecopy, being deemed the date of the Notice.

"Partner" or "Partners" - the General Partner and the Limited Partner, either individually or collectively, and their successors.

"Partnership" - Jay Peak Hotel Suites Phase II L.P., a limited partnership formed under and pursuant to the Act, and governed by this Agreement. Also sometimes referred to herein as the Limited Partnership.

"Partnership Property" - the Partnership's interest in real property, including without limitation (i) a condominium ownership interest in the Hotel and (ii) a leasehold interest pursuant to the respective Leases in the Bowling Center, Water Park, Clubhouse and Ice Arena, all located at the Jay Peak Resort in Jay, Vermont.

"Person" - an individual or entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, cooperative, or association and the heirs, executors, administrators, legal representatives, successors, and assigns of the Person where the context so requires.

"Project" - the aggregate of all of the Buildings and other improvements to be constructed, operated and managed, as applicable, by the Partnership on the Hotel Land or Resort Land at the Resort;

"Related Documents" - the Confidential Memorandum and exhibits thereto, as defined in Section 2.06(f).

"Resort Land" - the land owned by the Resort Owner on which the Partnership will construct, manage and operate, as applicable, the Clubhouse, Bowling Center, Water Park and Ice Arena.

"State" - The State of Vermont.

"Term" - The period of time the Partnership shall continue in existence as stated in Section 2.07.

"Treasury Regulations" - the temporary and final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Water Park" - the water park and related services to be constructed on Resort Land and leased, together with furniture, equipment and fixtures located or installed therein, for nominal consideration to, and operated by, the Partnership for a period not to exceed ten (10) years as set forth in a separate lease between the Partnership and Resort Owner (the "Water Park Lease"), which Water Park, collectively with the Bowling Center, Clubhouse and Ice Arena shall be known as the "Ancillary Projects" or "Ancillary Buildings".

#### **Section 1.02. Rules of Construction.**

(a) Unless the context clearly indicates to the contrary, the following rules apply to the construction of



this Agreement:

- (1) words importing the singular number include the plural number and words importing the plural number include the single number;
- (2) words of the masculine gender include correlative words of the feminine and neuter genders, and vice-versa;
- (3) the headings or captions used in this Agreement are for convenience of reference and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect;
- (4) any reference in this Agreement to a particular "Article," "Section" or other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the context shall otherwise require;
- (5) Words such as "herein", "hereinbefore," "hereinafter," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires; each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and
- (6) when any reference is made in this Agreement or any of the schedules or exhibits attached hereto to the Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.

(b) In the event there is more than one Limited Partner or more than one General Partner, the following additional rules of construction shall apply unless otherwise provided:

- (1) allocations to the General Partner and Limited Partner of Gain, Net Profits, Net Losses and Loss under Article VII, and distributions of Net Cash Flow and Capital Proceeds under Article VIII shall be further allocated and/or distributed between or among the General Partners and/or Limited Partners in proportion to each General or Limited Partner's respective interest, to be set forth on Exhibit A, as amended. Unless otherwise provided herein, no General Partner shall have a superior right to receive distributions than any other General Partner and no Limited Partner shall have a superior right to receive distributions than any other Limited Partner;
- (2) with respect to any matter on which the approval or ratification of the General Partner or the Limited Partner is required or may be given, such approval or ratification shall not be deemed to have been given unless given by Consent of the General Partner or the Consent of the Limited Partner, as the case may be; and
- (3) with respect to any matter on which the approval or ratification of the General Partner or the Limited Partner is required or may be given, each General Partner or Limited Partner, as the case may be, shall be entitled to vote.

**Section 1.03. Imputation of Knowledge and Notice.**

Notice or knowledge received by the Partnership is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction or event, and in any event from the time when it would have been brought to its or her attention if the Partnership had exercised due diligence. The Partnership exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction or event and there is reasonable compliance with the routines. Due diligence does not require an

individual acting for the Partnership to communicate information unless such communication is part of its or her regular duties or unless he or she has reason to know of the transaction or event and that the transaction or event would be materially affected by the information.

**Section 1.04. Successor Statutes and Agencies.**

Any reference contained in this Agreement to specific statutory or regulatory provisions, including without limitation the Act and the Code, or to specific governmental agencies or entities shall include any successor statute or regulation, or agency or entity, as the case may be.

**ARTICLE II - Partnership Business Purpose**

**Section 2.01. Formation of Partnership.**

The General Partner and the Initial Limited Partner hereby form the Partnership.

**Section 2.02. Partnership Name.**

The name of the Partnership is "Jay Peak Hotel Suites Phase II L.P."

**Section 2.03. Principal Place of Business.**

The principal office of the Partnership and the office to be maintained pursuant to the Act shall be located at the offices of Jay Peak Management Inc., 4850 VT Route 242, Jay, VT 05859-9621.

**Section 2.04. Registered Agent.**

The name and address of the registered agent and registered office of the Partnership for service of process are Jay Peak Management Inc., 4850 VT Route 242, Jay, VT 05859-9621.

**Section 2.05. Title to Partnership Property.**

Legal title to or a leasehold interest in Partnership Property shall be in the name of the Partnership, and no Partner, individually, shall have any ownership of or leasehold interest in such Partnership Property, except in its capacity as a Partner.

**Section 2.06. Purposes of the Partnership.**

The purposes, nature, and general character of the business of the Partnership shall consist of:

- (a) acquiring, owning, constructing, developing, leasing, subletting, managing, operating, holding for economic gain, and, if appropriate and desirable, selling or otherwise disposing of the Partnership Property or any substantial part thereof;
- (b) operating a Hotel using a portion of the Partnership Property and hiring such managers, consultants and other advisers, including without limitation the General Partner or its designee, as the Partnership deems necessary to run such Hotel;
- (c) operating the Bowling Center, Clubhouse, Ice Arena and Water Park under the terms of the Leases and hiring such managers, consultants and other advisers, including without limitation the General Partner or its designee as the Partnership deems necessary to run the Bowling Center, Clubhouse, Ice Arena and Water Park;
- (d) carrying on any and all activities, to enter into, perform and carry out contracts of any kind necessary to, incidental to or related to the foregoing in accordance with this Agreement;
- (e) mortgaging, selling, leasing, transferring, exchanging or otherwise conveying or encumbering all or part of the Partnership Property in furtherance of any and all of the objectives of the Partnership business;
- (f) assisting in enabling no more than one hundred and fifty (150) qualified foreign investors at any

one time (each a "Qualified Investor") to make qualifying "at risk" investments in a commercial enterprise (each a "Qualifying Investment"), which, though not restricted to such investments, is intended to also meet the requirements under 8 U.S.C. § 1153 (b)(5)(A) - (D); INA § 203 (b)(5)(A) - (D) of the Immigration & Nationality Act (the "IN Act") and qualify under this program (the "EB-5 Program") as an "Alien Entrepreneur", as more fully described in the Jay Peak Hotel Suites Phase II Private Offering Memorandum, a copy of which has been distributed to each Limited Partner in connection with the offering of Limited Partnership Interests hereunder (the "Offering") and each Limited Partner acknowledges receiving (the "Confidential Memorandum"); and

(g) as to those Qualified Investors who are not United States' citizens or lawful permanent residents of the United States (each an "EB-5 Investor" and collectively, the "EB-5 Investors"), using its reasonable best efforts to assist independent legal counsel acting for EB-5 Investors with the filing of each of the EB-5 Investors' petitions with USCIS, and of verifying required direct and indirect employment until removal of each of the EB-5 Investors' conditions to obtaining permanent residency.

#### **Section 2.07. Partnership Term and Dissolution.**

The Partnership shall continue in full force and effect until December 31, 2058 unless sooner terminated in accordance with Article XII. Upon termination of the Partnership, the General Partner shall take all actions necessary to terminate the Partnership in accordance with requirements of this Agreement and the Act.

#### **Section 2.08. Filing of Certificate.**

Immediately after the execution of this Agreement by the Partners, the General Partner shall cause the Certificate to be filed with the State in accordance with the Act.

### **ARTICLE III - Partnership Interests and Sources of Funds**

#### **Section 3.01. Identity of Partners and Interests.**

The names and business addresses of the General Partner and the Limited Partner are as identified on Exhibit A, as such Exhibit may be amended from time to time in accordance with this Agreement, and each such Partner has the Interest indicated next to its name on Exhibit A. The failure of the General Partner to periodically amend Exhibit A and list each new Limited Partner, however, shall not act to limit or detract in any way from each Limited Partner being considered a Limited Partner once its Capital Contribution is made.

#### **Section 3.02. Capital Contributions.**

(a) General Partner. Subject to the provisions of this Section, the General Partner shall be obligated to (and does hereby covenant and agree to) contribute to the capital of the Partnership the cash or property set forth after the General Partner's name on Exhibit A. The General Partner shall be obligated or permitted to make additional Capital Contributions to the Partnership only in accordance with this Agreement. The General Partner at its sole option may make an additional voluntary Capital Contribution to the Partnership at any time. A portion of the General Partner's Capital Contribution may arise from loan proceeds borrowed to fund construction costs in excess of the Partnership's equity capital, using the Project as security for the loan (the "Secured Debt"). To the extent Secured Debt proceeds cause the Partnership's capital to increase, each Partner's Interest in the Partnership shall be recalculated as a percentage of the sum of the Secured Debt proceeds plus existing General and Limited Partner equity Capital Contributions. The Limited Partners hereby acknowledge, consent and approve of the General Partner granting one or more security interests encumbering the Project and Hotel Land. The General Partner shall be responsible for repaying the Secured Debt according to its terms from the General Partner's allocation of Available Cash Flow and net proceeds from a Capital Transaction, from the sums

distributed to the General Partner upon dissolution of the Partnership, and/or from the General Partner's own funds. In addition, the General Partner intends to use Capital Contributions provided by newly admitted Limited Partners to pay down the principal balance of the Secured Debt. The Limited Partners shall have no obligation or liability for retiring the Secured Debt.

(b) Limited Partner. Subject to the provisions of this Section, each Limited Partner shall be obligated to (and does hereby covenant and agree to) contribute to the capital of the Partnership, by wire transfer or other form of available funds, the aggregate amount set forth herein. The subscription amount of each Limited Partner shall equal \$550,000 in cash (the "Subscription Amount"), of which \$500,000 shall be applied as a Capital Contribution to the Project as investor funds (the "Investment") and \$50,000 will be applied to cover administration, syndication and other expenses in the preparation and distribution of the Confidential Memorandum, including but not limited to accounting fees, legal expenses and miscellaneous expenses incurred by the Partnership and the General Partner (the "Administration Fees"). As further set forth in the Confidential Memorandum, after reserving an interest in the Limited Partnership by making an escrow deposit of \$10,000 with Chittenden Trust Company, FSB subject to the terms of an Investor Escrow Agreement – Initial Deposit Only, each Limited Partner shall have forty-five (45) days to conduct his due diligence, and an additional sixty (60) days thereafter to complete his investment into the Project by paying the rest of the Subscription Amount, which time periods may be extended by the General Partner at its sole discretion.

The Limited Partner shall not be obligated to make any additional Capital Contributions to the Partnership. All required Capital Contributions shall be subject to any applicable adjustments if otherwise permitted by this Agreement. Investment as a Limited Partner is available as a means of financing the planning, Hotel Land acquisition, construction and start-up of the Buildings and infrastructure at the Project. This investment may be beneficial, but is not limited, to investors who seek lawful permanent residence pursuant to the EB-5 Program under the IN Act, as more fully described in the Confidential Memorandum. There are other requirements of the EB-5 Program and other relevant immigration laws which the investor must observe or risk denial of lawful permanent residence pursuant to the EB-5 Program.

Investors shall begin the process to purchase a Limited Partnership Interest by completing the subscription procedure mandated by the Partnership, including depositing the Investment into the Partnership Account and depositing the Administration Fees into a designated Administrative Fees Account. Upon acceptance by the General Partner, closing shall occur and the investor will be issued an Interest in the Partnership (at which time each Limited Partner will be deemed to confirm its acceptance of all of the provisions and terms in this Agreement) and the investor's Investment will be final and irrevocable.

In the event of denial of a Limited Partner's I-526 Petition, other than based on the fraud or material misrepresentation of the investor, the Limited Partnership shall pay back the Investment within ninety (90) days of written request by the Limited Partner and the Interest of such Limited Partner shall automatically be terminated upon such repayment without the necessity for such Limited Partner to take such steps as are required under Section 10.01. The Limited Partner's rights in this case are limited solely to the return of the \$500,000 Investment and once the Investment is returned the Limited Partner shall no longer have any of the rights and benefits of ownership of an Interest or any right to participate in any manner whatsoever in the affairs of the Partnership. The Investment is separate from any previously paid or currently due distribution of profits.

Upon subscribing to the Offering and becoming a Limited Partner, it is at the sole responsibility and risk of each EB-5 Investor to file their I-526 petition. There is no refund of the Investment or the Administration Fees for failure to file an EB-5 Investor's I-526 petition.

If the regional center pilot program, created in support of the EB-5 Program and further described in the Confidential Memorandum (the "Pilot Program"), lapses on September 30, 2008, for each EB-5 Investor whose case is filed with USCIS prior to that date their \$500,000 Investment shall remain invested in the Partnership provided:

1. the Pilot Program is reauthorized retroactively or is pending reauthorization within a twelve (12) month period following its lapse, and the EB-5 Investor's I-526 petition is in due course adjudicated; or
2. legislation is enacted or pending providing substantially similar immigration benefits to EB-5 Investors as under the lapsed Pilot Program and the EB-5 Program within a twelve month period following the Pilot Program's lapse, and the EB-5 Investor's I-526 petition is in due course adjudicated.

If neither of the events described under 1 and 2 above occur, the EB-5 Investor at his option may either remain invested in the Project, or request in writing a refund of his Investment of \$500,000. Upon receipt of a request of refund to the General Partner, the Investment will be refunded to the requesting EB-5 Investor by the Limited Partnership within a period of ninety (90) days from receipt of such request, and the EB-5 Investor's Interest as a Limited Partner shall automatically be terminated as set forth above with respect to the termination of a Limited Partner's Interest. The EB-5 Investor's rights upon termination of his Interest are limited solely to the return of their Investment of \$500,000.

Notwithstanding anything herein to the contrary, in the event that the Resort Owner or an Affiliate invests funds or makes financial commitments, other than by the use of Secured Debt, to complete the Project, the Resort Owner or its Affiliate will be issued the remaining unsold Interests in the Partnership for no additional consideration and thereafter hold its Interest(s) subject to the terms of this Agreement.

### **Section 3.03 Interest on Capital Contributions**

No interest shall be paid to a Partner on Capital Contributions. Interest will be credited by the Partnership to a Partner on the sum of any deemed distributions charged to such Partner's Capital Account from obligations owed to the Partnership by a General Partner arising under section 5.03(b) concerning federal income tax withholding. The interest charged will be computed on a calendar year compounded basis at a rate equal to two percent above the rate of interest from time to time announced by Chittenden Bank to be its "prime rate" or "base rate", such interest to be collected by reduction of any distributions payable to the Partnership immediately following the calculation of the years interest by the General Partner. To the extent that there are no distributions against the interest that can be applied, then the interest will be charged to the Partner's Capital Account. This section 3.03(a) will survive the termination of a Partner's status as a Partner.

### **Section 3.04 Service of Secured Debt**

Payments to service the Secured Debt shall be made by the General Partner out of its share of Available Cash Flow, net proceeds from a Capital Transaction and sums distributed upon dissolution of the Partnership. For the security of the Limited Partners, the Partnership will service the Secured Debt directly out of the General Partner's share of these items including the General Partner's share of distributions to the Partners as set forth in section 8.01. If amounts required for the service of the Secured Debt are in excess of the General Partner's share of these items, then the General Partner will timely pay such amounts from its own funds. In the event that the General Partner fails to repay the Secured Debt according to its terms, any or all of the Limited Partners may, at their option, pay the unpaid amount and the amount paid shall be converted to equity for the benefit of the Limited Partners who made such payment, with the effect that the Interest of the General Partner will be pro-rata diluted and the Interest of the Limited Partners who paid pro-rata increased. The dilution will not affect the Interest of any other Limited Partner who did not make such payments.

**Section 3.05. Right to Require Repayment of Capital.**

No Partner shall have the right to withdraw from the Partnership all or any part of its Capital Contribution. No Partner shall have any right to demand and receive property of the Partnership in return for its Capital Contribution or in respect of its Interest, except as provided in this Agreement. No Limited Partner shall have priority over any other Limited Partner as to any return of Capital Contributions or as to any distributions made by the Partnership pursuant to Article VIII.

**Section 3.06. Deficit Restoration.**

If, upon liquidation of

(a) the General Partner's Interest (whether or not in connection with the liquidation of the Partnership), the General Partner has a negative balance in its Capital Account (as determined after taking into account Capital Account adjustments pursuant to Section 7.01 as well as adjustments for the Partnership Fiscal Year during which the liquidation of the General Partner's Interest occurs, other than those for contributions made pursuant to this Section), then the General Partner shall be required to contribute to the capital of the Partnership, immediately prior to the liquidation of its General Partner's Interest, the amount necessary to restore its Capital Account to zero. Such contributions shall be receipts of the Partnership available for payment of operating expenses and debts of the Partnership or distribution to the Partners, in accordance with the terms of this Agreement; and

(b) the Limited Partner's Interest (whether or not in connection with the liquidation of the Partnership), the Limited Partner has a negative balance in its Capital Account, the Limited Partner shall have no obligation to make any contribution to the capital of the Partnership and the negative balance of the Limited Partner's Capital Account shall not be considered a debt owed by the Limited Partner to the Partnership or any other Person for any reason whatsoever.

**Section 3.07. No Third-Party Beneficiary.**

None of the provisions of this Agreement shall be construed as existing for the benefit of any creditor of the Partnership or for the benefit of any creditor of the Partners, and no provision shall be enforceable by a party not a Partner.

**ARTICLE IV - Right to Mortgage**

**Section 4.01. Right to Mortgage.**

(a) In the General Partner's sole reasonable discretion and to facilitate the purposes of the Partnership, the General Partner may, in the name and on behalf of the Partnership, borrow money (including but not limited to Secured Debt) and issue evidences of indebtedness and secure the same by granting mortgages and security interests pledging all or any portion of the Partnership Property including without limitation collateral assignments of leasehold interests in the Ancillary Buildings, and to pay, prepay, extend, amend or otherwise modify the terms of any such borrowing and to sign any documents required on behalf of the Partnership in connection with said transaction(s), without the consent and signatures of the Limited Partners. The Limited Partners hereby acknowledge, consent and approve of same transaction(s).

(b) Except to the extent required by any lender and agreed to by the General Partner, no General Partner shall have any personal liability to such lender(s) or to the Partnership for the payment of all or any part of borrowed money or Secured Debt of the Partnership, except for customary exclusions for fraud, misappropriation of funds or waste.

**ARTICLE V - Rights, Powers and Obligations of the General Partner**

**Section 5.01. Authority of General Partner.**

(a) Subject to the terms of this Agreement, the General Partner shall be further responsible for the overall management and control of the business assets and affairs of the Partnership, and the General Partner shall have the right, power, and authority, acting for and on behalf of and in the name of the Partnership, to: (i) execute and deliver on behalf of the Partnership any contract, agreement, or other instrument or document required or otherwise appropriate to acquire, construct, lease, operate, encumber, mortgage or refinance the Partnership Property (or any part thereof); (ii) convey Partnership Property by deed, mortgage, certificate, bill of sale, agreement, or otherwise, as appropriate; (iii) bring, compromise, settle, and defend actions at law or in equity; (iv) delegate its authority, power, and right to manage the Partnership Property provided, however, that any such delegation shall not relieve the General Partner of its obligations and responsibilities to ensure the proper management of the Partnership Property unless it finds a suitable replacement General Partner as governed by Section 9.01; and (v) use Partnership funds in performance of its rights, duties and powers, and reimburse itself for its incurred costs to exercise its rights and perform its duties.

(b) The General Partner shall

(i) cause the Partnership to do all things necessary to maintain its status as a limited partnership in good standing and to enable the Partnership to engage in its business;

(ii) not act in any manner that will cause the Partnership to fail to qualify as a limited partnership under the Act, or the Limited Partner to be liable for Partnership obligations;

(iii) cause the Partnership to take all commercially reasonable actions under the laws of the State and any other applicable jurisdiction that are necessary to protect the limited liability of the Limited Partner under the Act;

(iv) during and after the period in which he is a Partner, provide the Partnership with such information and sign such documents as are reasonably necessary for the Partnership to make timely, accurate and complete submissions of federal and state income tax returns;

(v) furnish to counsel for the Limited Partner promptly as and when requested in connection with the rendering of any legal opinion concerning federal income tax relating to the Limited Partner's investment in the Partnership all documents reasonably requested by counsel for the Limited Partner;

(vi) promptly inform the Limited Partner of any litigation, action, investigation, event, or proceeding that is pending which, if adversely resolved, would have a material adverse effect on the Partnership or the Partnership Property; have a material adverse effect on the ability of the General Partner to perform its obligations under this Agreement; or have a material adverse effect on the financial condition of the General Partner;

(vii) promptly inform the Limited Partner if it receives notice of any violation with respect to the Partnership Property of any law, rule, regulation, order, or decree of any governmental authority having jurisdiction, which would have a material adverse effect on the Partnership Property or the use, occupancy, or operation thereof;

(viii) develop, manage and operate the Partnership Property, together with the Ancillary Projects, in compliance with all applicable federal, state and local governmental regulations,

ordinances, laws and rules, and this Agreement;

(ix) cause the Partnership to maintain necessary insurance against risks that are of a character usually insured by Persons engaged in a similar business and in form and amount and covering such risks as is usually carried by such Persons;

(x) take all actions necessary to ensure that the Partnership Property contains no, and is not affected by the presence of, any Environmental Hazard, and to ensure that the Partnership Property is not in violation of any federal, or local statute, law, regulation, rule, or ordinance. It shall promptly deliver to the Limited Partner a copy of any notice received from any source whatsoever of the existence of any Environmental Hazard on the Partnership Property or of a violation of any federal, state, or local statute law, regulation, rule or ordinance, including any Environmental Law with respect to the Partnership Property. If any Environmental Hazard is found to exist or be present, it shall commence promptly the taking of action to assure it will be either removed from the Partnership Property and disposed of or encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with federal, state and local statutes, laws, regulations, rules and ordinances;

(xi) investigate and report to the Limited Partner any bona fide proposal or offer of any Person, including any Partner, to acquire the Partnership Property or any part thereof;

(xii) set up one or more reserve fund accounts with Partnership funds and disburse funds from such accounts in an amount sufficient, so far as it is able, to insure the daily operation of the Hotel and the Ancillary Projects and meet the obligations of the Partnership.

(xiii) identify additional Limited Partners and provide information on the Project and the Partnership to them;

(xiv) perform services in connection with the acquisition, sale and leasing of the Partnership Property, including negotiating the purchase and sale agreement with the Resort Owner for the purchase of the Land on which the Hotel Building and Administrative Building will be built, for a purchase price not to exceed \$7,800,000 (which shall be paid in a combination of cash in the amount of \$4,200,000 and the Resort Owner Units as conveyed to be valued collectively at \$3,600,000). Upon the conveyance of the Resort Owner Units, all obligations and liability of the Partnership for the value of the Resort Owner Units, specifically \$3,600,000, shall be extinguished. The cash portion of the Hotel Land purchase may be structured as an installment sale or staged purchase or similar arrangement if required by the Resort Owner, on terms to be negotiated by the General Partner. Further services of the General Partner shall include, but not be limited to, the conveyance of the Resort Owner Units to the Resort Owner, when such Resort Owner Units are ready to be conveyed, and which said conveyance is hereby approved by the Limited Partners; act on behalf of the Partnership with federal, state and local authorities with respect to the Project; monitor compliance with zoning, land use and other requirements; and prepare or cause to be prepared such third party studies as it deems necessary in connection with the acquisition, sale and leasing of the Partnership Property and construction of the Buildings and other necessary improvements on the Partnership Property and Resort Land;

(xv) deal with and, if appropriate, use Partnership funds to purchase or otherwise redeem a Limited Partner Interest that is the subject of an insolvency or bankruptcy proceeding;

(xvi) oversee construction of the Hotel Building and operate and manage the Hotel, using its reasonable best efforts to maximize occupancy rates and income in the Hotel, including at its sole discretion leasing out any part of the Hotel or rooms in the Hotel, and overseeing any third parties' operation of the Hotel under management agreements, and negotiate third party agreements to construct the Hotel Building and to submit the Hotel Building and Hotel Land underneath to



condominium ownership, and to complete and file the Declaration of Condominium and any affiliated documents with the appropriate government authorities;

(xvii) to landscape the property adjoining the Buildings, and contribute Partnership funds to the costs thereof (pursuant to a Grant of Easement and Maintenance Agreement, among the Resort Owner, Partnership and other necessary parties thereto);

(xviii) oversee construction of the Ancillary Buildings, including negotiating third party agreements to construct the Ancillary Buildings, and operate and manage the Ancillary Projects, using its reasonable best efforts to maximize income, and overseeing any third parties' operation of the Ancillary Projects; and

(xix) Expenses: The Partnership shall promptly pay all costs and expenses of the Project which may include, but is not limited to:

1) Printing and all other expenses incurred in connection with insurance, distribution, transfer, registration and recording documents evidencing ownership of an interest in the Partnership in connection and with the business of the Partnership.

2) Fees and expenses paid to contractors, bankers for financing facilities, brokers and services, leasing agents, consultants, on site managers, real estate brokers, insurance brokers and other agents, including Affiliates of the Partnership, or any General Partner or its officers.

3) Expenses in connection with the acquisition, preparation, operation, improvement development, disposition, replacement, alteration, repair, remodeling, refurbishment, leasing, renting, costs of insurance, financing and refinancing of Partnership Property

4) All costs of personnel directly employed by the Partnership or performing services for the Partnership;

5) All costs of borrowed money (except the Secured Debt) including repayment of advances to the Partnership made by a Partner, which shall be paid monthly, interest only at a rate equal to two percent above the rate of interest from time to time announced by Chittenden Bank to be its "prime rate" or "base rate", and repaid in one lump sum five years after the date of the initial advance;

6) Legal, audit, accounting, brokerage and other fees including expenses of organizing, revising, amending, converting, modifying or terminating the Partnership.

7) Expenses in connection with distributions made by the Partnership to, the communications and book keeping and clerical work necessary in maintaining relations with, Limited Partners.

8) Expenses in connection with preparing and mailing reports required to be furnished to Partners for required tax reporting or other purposes which the General Partner deems appropriate, cost incurred in connection with any litigation, including any examination or audits by regulatory agencies, and costs of preparation and dissemination of informational material and documentation relating potential sale, refinancing or other disposition of Partnership Property.

In consideration for its services set forth in this Agreement, the General Partner has received its Interest.

(c) Except for matters for which Consent of the Limited Partner is required as set forth in Section 5.02(b), all decisions made for and on behalf of the Partnership by the General Partner shall be binding upon the Partnership. Except as expressly otherwise set forth in this Agreement, the General Partner (acting for and in the name and on behalf of the Partnership), in extension and not in limitation of the rights and powers given it by law or by the other provisions of this Agreement, shall, in its sole discretion, have the full and entire right, power and authority, in the management of the Partnership's day-to-day business, to do any and all acts and things necessary, proper, ordinary, customary or advisable to effectuate the purposes and to conduct the business of the Partnership.

**Section 5.02. Limitations on the Authority of the General Partner.**

(a) Notwithstanding any other provision of this Agreement, the General Partner shall have no authority to perform any act in violation of any applicable law or regulations; to do any act required to be approved, consented to, voted on, or ratified by the Limited Partner under the Act or under this Agreement unless such approval, vote, consent, or ratification has been obtained; to cause the Partnership to engage in any business other than as set forth in Section 2.06; or do any act that would make it impossible to carry out the business of the Partnership as contemplated herein.

(b) In addition, the prior Consent of the Limited Partner is required before the General Partner may:

(i) sell, mortgage or convey all or any substantial portion of the Partnership Property, other than (a) the conveyance of the Resort Owner Units to the Resort Owner or (b) as otherwise set forth in Section 3.02(a) or Section 4.01(a);

(ii) lease as an entirety the Partnership Property, or lease or rent out any portion of the Partnership Property, except in the Partnership's normal course of business, which shall be defined as operating the Hotel and Ancillary Projects;

(iii) acquire any real property in addition to the Partnership Property (other than land, easements, rights of way or similar rights required by governmental rule or regulations, or necessary or convenient for the development of the Partnership Property, the operation of the Hotel, the operation of the Ancillary Projects and the interrelationship between the Hotel, Ancillary Projects, Partnership Property and Resort);

(iv) voluntarily file a bankruptcy petition on behalf of the Partnership;

(v) dissolve or wind up the Partnership except as set forth in Article 12;

(vi) confess any judgment;

(vii) modify or amend this Agreement except as expressly provided in this Agreement;

(viii) admit any Person as a Partner, except as otherwise provided in this Agreement;

(ix) borrow from the Partnership or commingle Partnership funds with the funds of any Person; or

(x) receive any rebates or give-ups or participate in any reciprocal business relationships in circumvention of this Agreement.

(c) In addition, the General Partner may be replaced by the Limited Partner pursuant to Section 9.02.

**Section 5.03. Tax Matters Partner.**

(a) Jay Peak Management Inc., in its capacity as General Partner, is hereby designated as the tax matters partner and shall maintain the books and records of the Partnership, and shall be responsible, on a timely basis, for (i) preparing all required tax returns and related information, (ii) making all tax elections, if appropriate, and (iii) preparing all financial information, all in accordance with this Agreement. It shall keep the Partners informed of all administrative and judicial proceedings, shall furnish to each Partner (within five days after receipt) a copy of each notice or other communication received by it from the IRS, and shall not respond to any notice or other communication from the IRS which questions or challenges any item which has been or may be reported on a Partnership tax return until after notice of the proposed response is given to the Limited Partner. It shall have no authority, without the Consent of the Limited Partner, to (i) enter into a settlement agreement with the IRS which purports to bind Partners other than the General Partner,

(ii) file a petition as contemplated in Section 6226(a) or 6228 of the Code, (iii) intervene in any action as contemplated in Section 6226(b) of the Code, (iv) file any request contemplated in Section 6227(b) of the Code, (v) enter into an agreement extending the period of limitations as contemplated in Section 6229(b)(1)(B) of the Code, (vi) to file any tax related litigation in a court other than the United States Tax Court, or (vii) submit any report to the IRS.

(b) Federal Income Tax Withholding: In the event any of the Partners are subject to federal income tax withholding, the General Partner is authorized to withhold any sums required by the Internal Revenue Code even if such withholding conflicts with any of the terms and conditions of this Agreement or otherwise affects distributions, allocations or payments to the Partners. In the event that the General Partner learns of withholding obligations subsequent to the distribution to which the withholding obligations relate, the General Partner will issue an invoice to the Partner. If the invoice is not paid within sixty (60) days, the General Partner will charge the amount against the Partner's Capital Account. This section will survive the termination of a Partner's status as a Partner.

**Section 5.04. Outside Activities.**

The General Partner shall devote to the management of the business of the Partnership so much of its time as it deems reasonably necessary to the efficient operation of the Ancillary Projects, the Hotel and any other Partnership Property in order to comply with this Agreement. The General Partner and its Affiliates, and their officers, directors, agents, employees, representatives, attorneys, accountants and other persons operating on its behalf, may engage in and possess any interest in other business ventures (including limited partnerships) of every kind, nature, and description whatsoever, independently or with others, whether existing at the date hereof or hereafter coming into existence, including, without limitation, acting as general partner or limited partner of other partnerships that own, directly or through interests in other partnerships, hotels and conference center projects similar to, or in competition with, the Hotel or Ancillary Projects, including without limitation other hotels and conference center projects located at the Resort. Neither the Partnership nor the Partners shall have any rights by virtue of this Agreement in or to such other business ventures or to the income or profits derived therefrom and nothing shall be construed to render them partners in any such business ventures.

**Section 5.05. Liability to Partnership and Limited Partner.**

The General Partner, and its Affiliates, and their officers, directors, agents, employees, representatives, attorneys, accountants and other persons operating on its behalf shall not be liable, responsible, or accountable in damages or otherwise (including attorneys fees and expenses) to the Limited Partner or to the Partnership for any acts performed in good faith and within the scope of authority of the General Partner, or its Affiliates if any of the General Partner's duties have been contractually delegated to them, pursuant to this Agreement.

**Section 5.06. Indemnification of General Partner.**

(a) To the maximum extent permitted by law, the Partnership shall indemnify, defend, and hold harmless each General Partner and its Affiliates, and their officers, directors, agents, employees, representatives, attorneys, accountants, consultants and other persons operating on its behalf from and against any loss, liability, damage, cost, or expense (including reasonable attorney's fees) arising out of or alleged to arise out of any demands, claims, suits, actions, or proceedings against the General Partner, by reason of any act or omission performed by it (including its employees and agents) while acting in good faith on behalf of the Partnership and within the scope of the authority of the General Partner pursuant to this Agreement, and any amount expended in any settlement of any such claim of liability, loss, or damage; provided, however, that (i) the General Partner must have in good faith believed that such action was in the best interests of the Partnership, and such course of action or inaction must not have constituted breach of its fiduciary duty; and (ii) any such indemnification shall be recoverable from the assets of the Partnership, not from the assets of the

Limited Partner, and no Partner shall be personally liable therefore. This indemnity shall be operative only in the context of third-party suits, and not in connection with demands, claims, suits, actions or proceedings initiated by any Partner or any Affiliate thereof against another Partner. In no event, however, shall a Limited Partner bring suit against the General Partner, or recover damages from the General Partner, in an amount that exceeds the amount invested by the Limited Partner in the Partnership.

(b) Notwithstanding anything contained in this Section, the General Partner shall not be indemnified or saved harmless from any liability, loss, damage, cost, or expense incurred by it in connection with: (i) any civil or criminal fines or penalties imposed by law; (ii) any claim or settlement involving the allegation that federal or state securities laws were violated by the General Partner or the Partnership, except as to a claim asserted by the Limited Partner; or (iii) any claim involving breach of a fiduciary duty, unless (A) the General Partner is successful in defending such action on the merits, or (B) such claims have been dismissed in favor of the General Partner with prejudice on the merits by a court of competent jurisdiction, or (C) a court of competent jurisdiction approves a settlement and determines that the General Partner is entitled to costs.

(c) The General Partner, when entitled to indemnification pursuant to this Section, shall be entitled to receive, upon application therefore, reasonable advances to cover the costs of defending any proceedings against it but only if (i) the action relates to the performance of the duties or services by the General Partner on behalf of the Partnership; (ii) the action is commenced by a third party who is not a Partner or Affiliate thereof; and (iii) the General Partner covenants in advance to repay the advance of funds to the Partnership in accordance with this Section in the event it is determined that the General Partner is not entitled to indemnification hereunder. All rights of the General Partner to indemnification shall survive the dissolution of the Partnership and the death, retirement, incompetency, insolvency, bankruptcy, or withdrawal of the General Partner.

**Section 5.07. Dealing with Affiliates: Fees.**

The General Partner may, in the name and on behalf of the Partnership, enter into agreements or contracts for performance of services for the Partnership with an Affiliate of the General Partner, including without limitation services necessary to construct the Building and other improvements and for the operation of the Hotel and the Ancillary Projects, and the General Partner may obligate the Partnership to pay compensation for and on account of any such services; provided, however, such compensation and services shall be at costs to the Partnership not in excess of those disclosed in the Confidential Memorandum. In addition, the General Partner shall pay the Resort Owner its development fees disclosed in the Confidential Memorandum.

**ARTICLE VI - Rights and Obligations of the Limited Partner**

**Section 6.01. Management of the Partnership.**

To the full extent permitted by the Act and without being deemed a general partner, the Limited Partner shall participate in the management of the business of the Partnership by making suggestions or recommendations to the General Partner on issues of policy important to the Partnership, by participating in one or more of the activities set forth in 11 V.S.A. §3423(b), and as otherwise set forth in Section 5.02(b) and Section 9.02. The Limited Partner shall not have the power or authority, however, to bind the Partnership or to sign any agreement or document in the name of the Partnership.

**Section 6.02. Limitation on Liability of the Limited Partner.**

Notwithstanding any other provision of this Agreement, the liability of the Limited Partner shall be limited to its Capital Contributions at any given time as and when payable under the provisions of this Agreement. The Limited Partner shall not have any other liability to contribute money to or in

respect of the liabilities, obligations, debts or contracts of the Partnership, nor shall the Limited Partner be personally liable for any liabilities, obligations, debts or contracts of the Partnership. A Limited Partner shall be liable to the Partnership only to make payment of its Capital Contribution as and when due and, after its Capital Contribution shall be fully paid, no Limited Partner shall, except as otherwise required by the Act, be required to make any further Capital Contributions or lend any funds to the Partnership.

**Section 6.03. Outside Activities.**

Nothing herein contained in this Agreement shall be construed to constitute the Limited Partner the agent of any other Partner hereof or to limit in any manner the Limited Partner in the carrying on of its own businesses or activities. The Limited Partner may engage in and possess any interest in other business ventures (including limited partnerships) of every kind, nature and description, independently or with others, whether existing as of the date hereof or hereafter coming into existence, including, without limitation, acting as general partner or limited partner of other partnerships which own, directly or through interests in other partnerships, hotel and conference center projects similar to, or in competition with, the Project. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement in or to any such other business ventures or to the income or profits derived therefrom and nothing shall be construed to render them partners in any such business ventures.

**Section 6.04. Inspection of the Project.**

The Limited Partner and/or its agent or designee shall have the right to inspect the Project upon reasonable notice to the General Partner and the General Partner shall provide all reasonable assistance to the Limited Partner in such effort.

**Section 6.05. Representations.**

The Limited Partner represents, warrants, and covenants to the Partnership and the General Partner as follows:

(a) He is an "accredited investor" within the meaning of the definition in Rule 501(a), promulgated under the Securities Act of 1933 (the "Securities Act");

(b) He is responsible for obtaining his own advice, including without limitation income tax advice, regarding the Investment, can bear the economic risk of his Investment, and has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the Investment in an Interest in the Partnership;

(c) He is acquiring his Interest in the Partnership for investment for his own account, and not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that he has no present intention to sell, grant any participation in, or otherwise distribute the same;

(d) None of the Interests in the Partnership have been registered under the Securities Act or any applicable state securities laws on the basis that the sale provided for in this Agreement and the issuance of the Interests hereunder are exempt from registration under the Securities Act and any applicable state securities laws;

(e) He has received and reviewed, and understands and is fully satisfied with, all of the information and documentation he considers necessary or appropriate when deciding whether to purchase an Interest in the Partnership, including but not limited to the Confidential Memorandum, all exhibits thereto and all financial information disclosed therein or under this Agreement; has had the opportunity to ask questions and receive answers from the General Partner and the Partnership regarding the terms and conditions of the purchase of an Interest in the Partnership and the business, properties, prospects, and financial condition of the Partnership; and has had the opportunity to review the books and records of the Partnership and to obtain additional information

(to the extent the Partnership possessed such information or could acquire it without unreasonable effort or expense) necessary to verify the accuracy of any information furnished to it or to which it had access;

(f) Its Interest in the Partnership may not be sold, transferred, or otherwise disposed of without registration under the Securities Act and any applicable state securities laws or an exemption therefrom and, in the absence of an effective registration statement covering its Interest in the Partnership or an available exemption from registration under the Securities Act and any applicable state securities laws, its Interest must be held indefinitely;

(g) Any certificate or other document evidencing a partnership interest in the Partnership shall be endorsed with a legend substantially in the form set forth below:

**THE INTEREST IN THE PARTNERSHIP REPRESENTED HEREBY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR UNDER THE VERMONT UNIFORM SECURITIES ACT (2002) OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SUCH ACTS, OR UNLESS THE PARTNERSHIP HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE SATISFACTORY TO THE PARTNERSHIP AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED; and**

(h) No representation, warranty or statement by it in this Agreement or in any document, certificate or schedule furnished or to be furnished to the General Partner pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading.

#### **Section 6.06. Option to Purchase.**

Each Limited Partner shall have the first option to purchase an interest, either as a whole unit or a fractional interest, in the Hotel when the Hotel is marketed for sale. No commission will be due and payable on such exercise of the option, which must be exercised and closed on within sixty (60) days of receiving notice from the General Partner that the Hotel is for sale. The Partnership will arrange for title insurance, financing and legal counsel, at the Limited Partner's sole cost and expense, for each Limited Partner desiring to exercise his or her option to purchase and desiring to take advantage of these offered services.

### **ARTICLE VII - Allocations of Profits and Losses**

#### **Section 7.01. Maintenance of Capital Accounts.**

The Partnership shall maintain a Capital Account for each Partner. Each Capital Account shall be maintained in accordance with Treasury Regulation Section 1.704-1 (b)(2)(iv). To each Partner's Capital Account there shall be credited such Partner's Capital Contributions, and its distributive share of Net Profits and Gains and any item in the nature of income or gain allocated to such Partner pursuant to Section 7.02. From each Partner's Capital Account there shall be debited the amount of cash and the fair market value (as of the date of distribution) of any Partnership property (net of liabilities securing the distributed property that such Partner assumes or subject to which such Partner takes the distributed property) distributed to such Partner pursuant to any provision of this Agreement and the Partner's distributive share of Net Losses and Loss and any items in the nature of expenses or deductions that are allocated to the Partner pursuant to Section 7.02. and to the amounts charged under section 5.03(b) to such Partner.

**Section 7.02. Profits and Losses.**

After giving effect to the special allocations set forth in Section 7.03, the Net Profits, Net Losses, Gain and Loss of the Partnership shall be allocated pursuant to each Limited Partner's Interest or, in the event of Secured Debt being assumed by the Partnership, in the same manner as their proportionate share of Available Cash Flow and net proceeds from a Capital Transaction, provided, however, that no Net Profits, Net Losses, Gain and Loss of the Partnership for any Fiscal Year shall be allocated to a Limited Partner to the extent such allocation would cause or increase an Adjusted Capital Account Deficit with respect to that Partner, and those Net Losses, Losses or Partnership deductions shall instead be allocated to the General Partner. Any intangible expenses including, but not limited to, depreciation or amortization are to be allocated in accordance with each Partner's Interest.

**Section 7.03. Special Allocations and Limitations.**

(a) Notwithstanding the provisions of Section 7.02, Partners shall be specially allocated items of Partnership Net Profits, Net Losses, Gain and Loss to comply with the Code and with all applicable Treasury Regulations regarding special allocations for partners of a partnership (the "Regulatory Allocations"). Such provisions include, but are not limited to, minimum gain chargeback requirements, changes in recourse and nonrecourse debts and liabilities, and elimination of Adjusted Capital Account Deficits. The Regulatory Allocations shall be taken into account in allocating other profits, losses and other items of income, gain, loss and deduction to the Partners so that, to the extent possible, the net amount of such allocations of profits and losses and other items shall be equal to the amount that would have been allocated to each Partner had the Regulatory Allocation not occurred. The Tax Matters Partner shall have the absolute discretion to apply the Regulatory Allocations in a manner consistent with this Agreement, and to make any and all determinations of special allocations thereunder.

(b) The respective interest of the Partners in the Net Profits, Net Losses, Gain, and Loss or items thereof shall remain as set forth above unless changed by amendment to this Agreement.

**ARTICLE VIII - Cash Distributions**

**Section 8.01. Distributions of Available Cash Flow.**

Available Cash Flow shall be distributed by the General Partner to and among the Partners and for the purposes below, within thirty (30) days after the close of each calendar month, as follows:

- (a) first, to the repayment or part thereof of any remaining unpaid loans made by the General Partner or its Affiliates or third party interests to the Partnership;
- (b) second, to the payment of any debts owed to the Limited Partners; and
- (c) the balance to the Partners according to their Interests.

Notwithstanding the foregoing, it will be up to the General Partner in its sole discretion and if in the best interest of the Partnership to make any distributions. Distributions can only be made monthly, or such extended period of time, as the General Partner, in its sole discretion, may deem appropriate from the accumulated balance of Available Cash Flow.

**Section 8.02. Distributions of Proceeds from Capital Transaction.**

Proceeds from a Capital Transaction (defined as the net proceeds, after all costs, expenses and payments to Affiliates and any third party interests, upon liquidation of the Partnership resulting from the sale of the Partnership Property as set forth in Article XII, or upon sale or other disposition of the Hotel, in the entirety or otherwise as set forth in Section 10.03), shall be distributed to and among the Partners in the following amounts and order of priority:

- (a) first, to the payment of all matured debts and liabilities of the Partnership other than debts, liabilities and fees owed to Partners or their Affiliates;
- (b) second, to the repayment of any remaining unpaid loans from the General Partner or its Affiliates to the Partnership;
- (c) third, to the payment of any debts owed to the Limited Partner and their Affiliates;
- (d) fourth, to the Partners to the extent of their Adjusted Capital Account Deficits; and
- (e) last, to the Partners according to their Interests, the balance of which shall be distributed to the Partners in the same manner as distributions of Available Cash Flow.

#### **Section 8.03 Deficit Capital Accounts at Liquidation**

The Limited Partners shall have no liability to the Partnership, to the General Partners or to the creditors of the Partnership on account of any deficit balance in their capital accounts upon liquidation of the Partnership, provided however that any Partner for whom any changes have been made to his capital account by reason of the obligations under section 3.03 and section 5.03(b) This section 8.03 will survive the termination of the Partners' status as a Partner. A Partner must also pay any attorneys' or accountants' fees actually and reasonably incurred by the Partnership or a General Partner in collecting amounts under this provision from the Partner.

#### **Section 8.04 Limitation of Liability**

No Limited Partner shall have any personal liability whatsoever, whether to the Partnership, to any Partners or to the creditors of the Partnership, for the debts or obligations of the Partnership or any of its losses beyond his Capital Contribution, to be set forth opposite his name in exhibit A attached hereto; provided, however, that any Partner for whom any charges have been made to his Capital Account by reason of the obligations described in section 8.02, section 3.03 and or section 5.03(b), is required to reimburse the Partnership for the amount of any negative balance in his Capital Account, but such reimbursement shall not exceed the sum of such Partner's obligations under section 8.03 and section 8.04. This section 8.04 will survive the termination of a Partner's status as a Partner. A Partner must also pay any attorneys' or accountants' fees actually and reasonably incurred by the Partnership or a General Partner in collecting amounts under this provision from the Partner.

#### **Section 8.05 Death or Incapacity of Limited Partner**

The death, legal incapacity, dissolution, termination, merger, consolidation or bankruptcy (each a "Triggering Event") of one or more Limited Partners shall not cause dissolution of the Partnership, but the rights of such Limited Partner(s) to share in the profits and losses of the Partnership, to receive distributions from the Partnership and to assign an Interest in the Partnership shall, on the happening of such a Triggering Event, devolve upon such Limited Partner's executor, administrator, guardian, conservator or other legal representative or successor as the case may be, subject to the terms and conditions of this Agreement, and the Partnership shall continue as a Limited Partnership. However, in any such Triggering Event such legal representative or successor or any assignee of such legal



representative or successor shall be admitted to the Partnership as a Limited Partner only in accordance with and pursuant to all of the terms and conditions of this Agreement.

**Section 8.06 Recourse of Limited Partners**

Each Limited Partner shall look solely to the Project for all distributions with respect to the Partnership, his Capital Contribution thereto and profits and losses thereof, and shall have no recourse therefore upon dissolution of the Partnership or otherwise against the General Partners or any other Limited Partner, except to the extent of any required General Partner contributions to the Partnership required by Article III.

**Section 8.07 No Right to Property**

No Limited Partner shall have a right to demand or receive any distribution from the Partnership in any form other than cash, upon dissolution of the Partnership or otherwise.

**ARTICLE IX - Admission of Successor and Additional General Partners: Removal and Withdrawal of General Partner**

**Section 9.01. Voluntary Withdrawal of General Partner/Admission of Successor or Additional General Partners.**

(a) The General Partner shall not have any right to retire or withdraw voluntarily from the Partnership or to sell, transfer, or assign all or any portion of its Interest, without the Consent of the Limited Partner, which consent shall not be unreasonably withheld, delayed or conditioned. In the event that the Consent of the Limited Partner has been obtained by the General Partner, the General Partner shall designate one or more persons to be its successor. In no event shall the Interests of the other Partners be affected thereby. The designated successor General Partner shall be admitted as such to the Partnership upon approval of the Limited Partner and upon satisfying the conditions of this Agreement. Any voluntary withdrawal by the General Partner from the Partnership or any sale, transfer, or assignment by the General Partner of its Interest shall be effective only upon the admission of the successor General Partner in accordance with this Agreement, at which time the predecessor General Partner shall no longer have any obligations or liability under this Agreement.

(b) A successor General Partner shall, by its execution of an amendment to this Agreement and as a condition precedent to being admitted as a successor General Partner and to receiving any Interest in the Partnership or the Partnership Property, agree to be bound by this Agreement to the same extent and on the same terms as the predecessor General Partner.

(c) Upon the execution of the amendment to this Agreement by the successor General Partner and the admission of a successor General Partner, an amendment to the Certificate shall be executed by the successor General Partner and filed in accordance with the Act.

**Section 9.02. Removal of General Partner/Admission of Additional General Partner Under Certain Circumstances.**

(a) Upon the occurrence of an Event of Default, as defined herein, the Limited Partner shall have the right to cause a Person to be admitted to the Partnership as an additional General Partner and to remove a defaulting General Partner or both. The Limited Partner shall have the right in the name of the General Partner to take all actions and do all things necessary or appropriate to implement and carry out the provisions of this Section, provided that the replacement or addition of a General

Partner must be an Affiliate of the Initial General Partner, unless prohibited by state or federal law.

(b) The following shall each be an Event of Default:

(1) the General Partner has, in connection with the Partnership or the Project, performed an act or failed to perform any act constituting fraud, intentional misconduct, material breach of fiduciary duty, misappropriation or commingling of funds, or dishonesty;

(2) the General Partner has breached any material written representation, covenant or warranty under this Agreement that substantially impairs the performance or purpose of the Partnership; or

(3) an Event of Bankruptcy shall have occurred with respect to the General Partner;

(c) If the Limited Partner elects to

(1) admit a Person as an additional General Partner upon the occurrence of an Event of Default, such admission shall occur automatically and without further action by the General Partner upon the giving of notice thereof by the Limited Partner to the General Partner, and each of the Partners hereby agrees and consents in advance to the foregoing admission. Upon the occurrence of such admission, any delegation of authority given to the defaulting General Partner (whether expressly set forth in this Agreement or otherwise) shall be canceled and of no further force and effect, and instead the defaulting General Partner shall be deemed to have delegated, automatically and without the requirement of a writing or any other action other than as set forth above, all its powers and authority (including, without limitation, all right to deposit to, withdraw from and otherwise control all Partnership bank accounts) to the Person so designated by the Limited Partner in its capacity as an additional General Partner. Notwithstanding its admission to the Partnership, the additional General Partner may withdraw as a General Partner without the consent of any other Partner.

(2) remove the General Partner, then the Limited Partner shall have the right, without the consent of any of the General Partner, to designate a successor General Partner and elect to continue the business of the Partnership; such removal shall occur automatically and without further action by any Partner upon the giving of notice thereof by the Limited Partner to the General Partner. Upon such removal, (A) the removed General Partner shall have the obligation to sell its Partnership Interest to the General Partner or its designee for \$10.00US; and (B) such removed General Partner shall thereafter cease to have any interest in the capital, profits, losses, distributions, and all other economic incidents of ownership of the Partnership.

(d) The Limited Partner shall not have the right to exercise any remedies pursuant to this Article as a result of any Event of Default if the failure or violation is curable and if the General Partner shall cure such failure or violation within 30 days after notice.

### **Section 9.03. Event of Bankruptcy of a General Partner.**

(a) The General Partner shall cease to be the General Partner upon an Event of Bankruptcy with respect to the General Partner, or, with the Consent of the Limited Partner, upon the occurrence of the General Partner's insolvency. Upon such an Event of Bankruptcy, or, with the Consent of the Limited Partner, such insolvency, the remaining or successor General Partner shall cause the Partnership to redeem the General Partner's Interest for \$10.00US and the General Partner shall thereafter cease to have any interest in the capital, profits, losses, distributions, and all other economic incidents of ownership of the Partnership.

(b) If, at the time of an Event of Bankruptcy with respect to the General Partner, the General Partner is the sole General Partner, the Limited Partner shall have the right, in its sole discretion, to designate a successor General Partner and the Limited Partner may, within the maximum number of days permitted by the Act after the General Partner's ceasing to be a General Partner of the Partnership, elect to continue the business of the Partnership.

**Section 9.04. Continuation of the Business of the Partnership.**

(a) If, at the time of an Event of Default, the General Partner was not the sole General Partner, the remaining General Partner or General Partners may elect to continue the business of the Partnership and shall immediately: (i) give Notice to the Limited Partner of such Event of Default; and (ii) subject to the Consent of the Limited Partner, make any amendments to this Agreement and execute and, if required by the Act, file for recording any amendments or other documents or instruments necessary to reflect the termination of the Interest of the General Partner as and in order to comply with the requirements of the Act.

(b) A Person shall be admitted as a successor or additional General Partner with the Consent of the Limited Partner if an amendment to the Certificate evidencing the admission of such Person as a General Partner shall have been filed with the Secretary of State of the State. Each General Partner hereby agrees to execute promptly any such amendment to the Certificate, if required, in the event of its withdrawal or removal pursuant to the provisions of this Article. The Limited Partner shall have the right in the name of the General Partner to execute any such amendment in the event of the General Partner's withdrawal or removal. The election by the Limited Partner to remove any General Partner or admit any additional General Partner under Section 9.02 shall not limit or restrict the availability and use of any other remedy that the Limited Partner or any other Partner might have with respect to any General Partner in connection with its undertakings and responsibilities under this Agreement.

**ARTICLE X- Assignability of Interests of Limited Partner**

**Section 10.01. Substitution and Assignment of a Limited Partner's Interest.**

(a) Other than as set forth herein, no Limited Partner shall have the right to assign, sell, transfer, convey, encumber or pledge its Interest. In no event shall any Interest of a Limited Partner, or any portion thereof, be sold, transferred or assigned to a minor or incompetent, and any such attempted sale, transfer or assignment shall be void and ineffectual and shall not bind the Partnership or the General Partner. This investment may be beneficial to investors who seek lawful permanent residence pursuant to the EB-5 Program under the IN Act, as more fully described in the Confidential Memorandum. Failure of a Limited Partner desiring lawful permanent residence to remain invested fully in the Limited Partnership may result in the denial of lawful permanent residence for such Limited Partner as an outcome of this investment. There are other requirements of the EB-5 Program which the interested investor must observe or risk denial of lawful permanent residence pursuant to the EB-5 Program, as further set forth in the Confidential Memorandum.

(b) No assignment of the Interest of a Limited Partner shall be made if, in the opinion of counsel to the Partnership, such assignment (i) may not be effected without registration under the Securities Act, (ii) would result in the violation of any applicable state securities laws, (iii) would result in a termination of the Partnership under Section 708 of the Code (unless consented to by the General Partner), (iv) would result in the treatment of the Partnership as an association taxable as a corporation or as a "publicly-traded limited partnership" for tax purposes (unless consented to by the General Partner), or (v) would jeopardize the ability of any other Limited Partner to qualify under the EB-5 Program to become a lawful permanent resident of the United States. The Partnership shall not be required to recognize any such assignment until the instrument conveying such interest has been

delivered to the General Partner for recordation on the books of the Partnership and the General Partner has consented to the assignment under the parameters set forth herein. Unless an assignee becomes a substitute Limited Partner in accordance with the provisions of subsection (c), he shall not be entitled to any of the rights granted to a Limited Partner hereunder, other than the right to receive all or part of the share of the Net Profits, Net Losses, cash distributions or returns of capital to which its assignor would otherwise be entitled.

(c) An assignee of the Interest of a Limited Partner, or any portion thereof, shall become a substitute Limited Partner entitled to all the rights of a Limited Partner if, and only if:

(i) the assignor (or, if the assignor is a defaulting Limited Partner, the General Partner pursuant to the power of attorney granted in Section 16.09) gives the assignee such right;

(ii) the assignee pays to the Partnership all costs and expenses howsoever incurred in connection with such substitution, including, specifically, without limitation, costs incurred in the review and processing of the assignment and in amending the Partnership's then current Certificate and/or Agreement of Limited Partnership, if required; and

(iii) the assignee executes and delivers such instruments, in form and substance satisfactory to the General Partner, as the General Partner in its sole discretion may deem necessary or desirable to effect such substitution and to confirm the agreement of the assignee to be bound by all the terms and provisions of this Agreement.

(d) The Partnership and the General Partner shall be entitled to treat the record owner of any Partnership Interest as the absolute owner thereof in all respects, and shall incur no liability for distribution of cash or other property made in good faith to such owner until such time as a written assignment of such Interest has been received and accepted by the General Partner and recorded on the books of the Partnership. The General Partner may refuse to accept an assignment until the end of the next successive quarterly accounting period.

#### **Section 10.02. Withdrawal of Initial Limited Partner.**

Notwithstanding the provisions of Article X, the Interest of the Initial Limited Partner shall be terminated and of no further force or effect upon the first admission of a Limited Partner other than the Initial Limited Partner. The termination of the interest of the Initial Limited Partner shall be automatic and require no action on its part or on the part of any other Person, and the General Partner shall cause to be prepared appropriate amendments to Exhibit A of this Agreement and to the Certificate.

#### **Section 10.03. Sale or Other Disposition of Hotel.**

(a) Notwithstanding anything herein to the contrary, beginning in the fourth quarter of 2013, or once all conditions have been removed under the EB-5 Program for all Qualified Investors who have invested into the Partnership to take advantage of the EB-5 Program, whichever is the later, the General Partner shall review market conditions to determine if it is appropriate to market the Hotel and, if so, to decide upon a plan of disposition of the Hotel (which may, but need not, include the sale of fractional interests, subdivision of the Hotel into separate condominiums or other common interest ownership units, and sale, or redemption by the Partnership, of Limited Partner Interests), to be managed and conducted exclusively by the General Partner or its designee on terms to be determined by General Partner in its sole discretion. Without limiting the foregoing, said terms will include brokerage fees payable to General Partner or its designee of eight percent (8%) if whole units are sold or if the Hotel is sold in its entirety as an operating business, and fifteen percent (15%) if fractional interests are sold. The Consent of the Limited Partner to the disposition shall only be required if the Hotel is sold in its entirety as an operating business.

(b) In the event the General Partner institutes a plan to market the Hotel, as described in (a) above, the General Partner will as a condition of the sale require the purchaser(s) to make their purchased property interests available to commercially reasonable, on-going Hotel operations to assist in maintaining permanent employment created by this Project, and the General Partner or its designee will continue to manage the Hotel on terms, including terms of compensation, substantially similar to those contained in this Agreement.

**Section 10.04. Termination of Leases for Ancillary Buildings.**

All Ancillary Buildings shall be operated by the Partnership for up to ten (10) years upon terms and conditions set forth in the individual Leases. All Leases shall automatically terminate upon the withdrawal of all Partners from the Partnership, or upon the expiration of the ten (10) year term, whichever is sooner.

**ARTICLE XI - Management Compensation, Etc.**

**Section 11.01. Management Compensation, Etc.**

Other than receiving its Interest herein, being reimbursed for all of its expenses and costs incurred related directly or indirectly to the development of the Project (including but not limited to permitting fees, professional fees and third party consultant fees), and receiving reimbursement for expenses and other costs incurred directly or indirectly by the General Partner to fulfill its duties hereunder, the General Partner shall not be entitled to compensation for its services rendered pursuant to this Agreement. While maintaining overall control hereunder, the General Partner shall, however, delegate its duty to operate the Hotel and the Ancillary Projects to an Affiliate for compensation to be paid by the Partnership in an amount equal to fifty percent (50%) of the gross income of the Hotel and the Ancillary Projects, excepting for the Golf Clubhouse, where the compensation shall be 75% of the gross income derived from the Golf Clubhouse, from which the Affiliate will pay all of the day to day operating, management and marketing costs of the Hotel and the Ancillary Projects, and ensure adequate staffing levels. In addition, the General Partner shall delegate its duty to develop the Project, including but not limited to the construction and build out of the Project, to the Resort Owner or another Affiliate for a construction supervisor charge to be paid by the Partnership in an amount equal to fifteen percent (15%) of the overall cost to the Partnership of the Hotel, excluding the cost of the Hotel Land acquisition. Further, the General Partner shall delegate its duty to market the Hotel to an Affiliate on the terms and for the fees as defined in Section 10.03 herein. Each Limited Partner has been given a copy of the Confidential Memorandum, including without limitation the financial pro formas attached thereto, in which the proposed fee structure to compensate the General Partner or its Affiliate(s), as identified in this section, is disclosed and agreed to without limitation by each Limited Partner.

**ARTICLE XII - Dissolution of Partnership**

**Section 12.01. Dissolution.**

The Partnership shall be dissolved, and the business of the Partnership shall be terminated in accordance with the Act, upon the occurrence of any of the following events:

(a) the dissolution, liquidation, withdrawal, retirement, removal, death, insanity, disability and/or Event of Bankruptcy of a General Partner, under such circumstances where no other remaining General Partner desires to continue the Partnership; provided, however, that the Partnership shall not be dissolved as aforesaid if the Limited Partner shall, within the maximum number of days permitted by the Act, elect to continue the Partnership and the Partnership business, and shall designate a successor General Partner;

(b) an election to dissolve the Partnership made in writing by all of the Partners in accordance with

the Act;

(c) the sale or other disposition of all or substantially all of the Partnership Property, whether under Section 10.03 or otherwise;

(d) the expiration of the Term; or

(e) The occurrence of any other event causing the dissolution of a limited partnership under the laws of the State.

**Section 12.02. Distribution of Partnership Assets.**

Upon the dissolution of the Partnership, the Partnership business shall be wound up, all leases shall terminate and its assets liquidated; and the net proceeds of such liquidation shall be distributed to the Partners as set forth in Section 8.02.

**Section 12.03. Termination of the Partnership.**

The Partnership shall terminate when all Partnership Property shall have been disposed of (except for any liquid assets not so disposed of), and the net proceeds therefrom, as well as any other liquid assets of the Partnership, have been distributed to the Partners as provided in this Article and in accordance with the Act.

**ARTICLE XIII - Accounting and Reports**

**Section 13.01. Bank Accounts.**

The General Partner shall deposit the funds of the Partnership in the name of the Partnership in such separate bank account or accounts, and with such bank or banks whose deposits are insured by an agency of the federal government, as shall be determined by and in the sole reasonable discretion of the General Partner. The General Partner shall arrange for the appropriate operation of such account or accounts.

**Section 13.02. Books of Account.**

The General Partner shall at the expense of the Partnership keep at the principal office of the Partnership true, correct, and complete books of account, maintained in accordance with generally accepted accounting principles, consistently applied, in which shall be entered fully and accurately each and every transaction of the Partnership. For federal income tax and financial reporting purposes, the Partnership shall use the accrual method of accounting and the fiscal year shall end December 31. Each Partner shall have access thereto to inspect and copy such books of account at all reasonable times upon reasonable advance written notice to the General Partner. The Partnership shall retain all books and records for the longest of the periods required by applicable laws and regulations.

**Section 13.03. Reports.**

The General Partner shall at Partnership expense cause to be prepared and delivered to the Limited Partner and, when required, shall cause the Partnership to file with relevant governmental agencies, each of the following:

(a) by March 15 of each calendar year, the Partnership's federal income tax return including Schedule K-1's to form 1065 and all other information from the Partnership necessary for the preparation of the Limited Partner's federal income tax return;

(b) by March 15 of each calendar year, for the prior fiscal year a financial statement and report prepared for the Partnership in accordance with generally accepted accounting principles; and

(c) in addition, General Partner at its sole discretion may distribute interim financial reports.

**Section 13.04. Tax Elections and Adjustments.**

The General Partner is authorized to cause the Partnership to make, forego or revoke such elections or adjustments for Federal Income tax purposes as they deem necessary or advisable in their sole discretion, provided such elections or adjustments are consistent with federal income tax rules and principles, including but not limited to, in the event of a transfer of all or part of the Limited Partnership interest of any Partner, an election pursuant to section 754 of the Code to adjust the basis of the assets of the Partnership or any similar provision enacted in lieu thereof. The Partners will, upon request, supply any information necessary to properly give effect to any election or adjustment.

**ARTICLE XIV - Meetings of the Partnership**

**Section 14.01. Meetings of the Partnership.**

Meetings of the Partnership may be called for any matters upon which the Partners may vote as set forth in this Agreement. The calling of a meeting shall be made:

(a) by the General Partner, which shall give Notice to the Partners setting forth (i) a statement of the purposes of the meeting, and (ii) the date of the meeting (which shall be a date no fewer than 15 days and no more than 30 days after the date of the Notice); or

(b) by the Limited Partner (which for the limited purpose of this subsection shall require at least sixty-six percent (66.67%) of the Limited Partners agreeing to such call for a meeting), which shall give Notice to the Partners setting forth a statement of the purposes of the meeting. No more than 15 days after receipt of such Notice, the General Partner shall provide Notice of the meeting to the other Partners in accordance with subsection (a).

**ARTICLE XV - Amendments**

**Section 15.01. Generally.**

In addition to amendments otherwise authorized in this Agreement, this Agreement may be amended in any respect from time to time by the General Partner without written approval or consent of Limited Partners including but not limited to the following:

(a) by the General Partner, without the Consent of the Limited Partner, to

(1) add to its duties or obligations or to surrender any right or power given to it by this Agreement;

(2) cure any ambiguity, correct or supplement any provision of this Agreement which may be inconsistent with any other provision of this Agreement or make any other provisions with respect to matters or questions arising under this Agreement which are not inconsistent with the provisions of this Agreement;

(3) reflect on Exhibit A the removal, addition or substitution of the General Partner or the Limited Partner;

(4) correct or modify any provision to comply with the Act or satisfy USCIS; or

(5) any other amendment in the General Partner's sole discretion, so long as the amendment does not allow the Limited Partner to take part in the control of the Partnership's business in a manner that would reduce or eliminate the limited liability of the Limited Partner, or otherwise modify the limited liability of the Limited Partner, or increase the liability or obligations of

the Limited Partner, or as to change the Capital Contributions required, or rights and interests in profits, losses and distributions of any Partner or dilute the interest of the Limited Partner.

**Section 15.02. Signatures.**

The General Partner shall sign any amendment to this Agreement adopted in accordance with the terms of this Agreement.

**ARTICLE XVI - Miscellaneous Provisions**

**Section 16.01. Notices, etc.**

All notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered or mailed by first-class registered or certified mail, postage prepaid, to the respective parties hereto at their respective addresses set forth in Exhibit A or in each case at such other address as such party may have furnished to the Partnership in writing, (ii) delivered in hand to a party, (iii) on the business day next following delivery to a nationally recognized overnight courier, or (iv) when transmitted by facsimile with electronic confirmation of transmission receipt.

**Section 16.02. Survival of Representations.**

All representations, warranties, and indemnifications contained herein shall survive the dissolution and final liquidation of the Partnership.

**Section 16.03. Entire Agreement.**

This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements between and among them respecting the subject matter of this Agreement.

**Section 16.04. Applicable Law.**

It is the intention of the parties hereto that all questions with respect to the construction, enforcement, and interpretation of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State without regard to principles of conflicts of laws.

**Section 16.05. Severability.**

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable statutes, laws, ordinances, rules, and regulations. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

**Section 16.06. Binding Effect.**

(a) Each Partner, including any additional General Partner, successor General Partner, additional Limited Partner and substitute Limited Partner, shall be deemed to have adopted, and to have agreed to be bound by, all the provisions of this Agreement.

(b) When entered into by a Partner, this Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective spouses, heirs, executors and administrators, personal and legal representatives, successors and assigns.

**Section 16.07. Counterparts.**

This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the



same counterpart.

**Section 16.08. No Implied Waiver.**

No failure on the part of any Partner to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

**Section 16.09. Power of Attorney.**

Each Limited Partner, including any additional or substituted Limited Partner, by the execution of this Agreement or any counterpart thereof, does hereby irrevocably constitute and appoint the General Partner's president William Stenger, with full power of substitution, acting alone or jointly, its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead, to make, execute, acknowledge, swear to, deliver, file and record such documents and instruments as may be necessary or appropriate to carry out the provisions of this Agreement, including, but not limited to: (i) such amendments to this Agreement and the Partnership's Certificate of Limited Partnership, as amended from time to time, as are necessary to effectuate the provisions of this Agreement, including without limitation to admit to the Partnership a substituted Limited Partner or a substituted General Partner, (ii) such documents and instruments as are necessary to cancel the Partnership's Certificate of Limited Partnership, (iii) an amended Certificate of Limited Partnership reflecting the terms of this Agreement, (iv) all certificates and other instruments deemed advisable by the General Partner to permit the Partnership to become or to continue as a limited partnership or partnership wherein the Limited Partner has limited liability in the jurisdiction where the Partnership may be doing business, (v) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Partnership and (vi) all other instruments which may be required or permitted by law to be filed on behalf of the Partnership. The foregoing power of attorney is coupled with an interest, shall be irrevocable and shall survive the death, bankruptcy or incapacity of any Limited Partner and the assignment by any Limited Partner of its limited partnership interest.

**Section 16.10. Partition.**

The Partners hereby agree that no Partner, nor any successor-in-interest to any Partner, shall have the right while this Agreement remains in effect to have the property of the Partnership partitioned, or to file a complaint or institute any proceeding at law or in equity to have the property of the Partnership partitioned, and each Partner, on behalf of himself, his successors, representatives, heirs, and assigns, hereby waives any such right. It is the intention of the Partners that during the term of this Agreement, the rights of the Partners and their successors-in-interest, as among themselves, shall be governed by the terms of this Agreement, and that the right of any Partner or successor-in-interest to assign, transfer, sell or otherwise dispose of its interest in the Partnership's Property shall be subject to the limitations and restrictions of this Agreement.

**Section 16.11. Confidentiality.**

A prospective investor into the Partnership, by accepting receipt of this Agreement, agrees not to duplicate or to furnish copies of this Agreement or to divulge information garnered from this Agreement or its exhibits to persons other than such investor's investment and tax advisors, accountants and legal counsel, and such advisors, accountants and legal counsel together with the prospective investors and any other persons to which this Agreement or the Related Documents come into their possession are prohibited from duplicating or using this Agreement, the Related Documents and all exhibits thereto in any manner other than to determine whether the investor wants to invest into the Partnership. Prospective investors are not to construe the contents of this Agreement as legal, investment, immigration or tax advice, or any other advice related to the efficacy of the investment to them. The General Partner has not engaged any legal or other advisors to represent prospective investors. Each prospective investor should consult their

own advisors as to legal, tax and related matters concerning the efficacy of this investment and the appropriateness of this investment to them and any other matters concerning this investment. The expense of such consultations shall be paid separately by the investor.

**Section 16.12. Approval of Agreement.**

All Qualified Investors who invest in the Partnership and become a Limited Partner, by their receipt of this Agreement and investment into the Partnership hereby approve this Agreement, all Related Documents and all exhibits thereto, and approve without limitation the use of their investment proceeds, the investment itself, and all management and exit strategies, all as disclosed herein.

**Section 16.13. No Guarantees or Redemption Rights.**

Each Limited Partner acknowledges and agrees by their receipt of this Agreement and investment into the Partnership that no promises or guarantees of performance, investment results or returns, rights to redeem their Interests or removal of conditions under the EB-5 Program have been made to them by anyone, including but not limited to by the General Partner or any of its Affiliates, and their agents, representatives, officers, salesmen, managers, employees, attorneys, consultants and third party contractors, and they are not relying on anything from the General Partner or any of its Affiliates, and their agents, representatives, officers, salesmen, managers, employees, attorneys, consultants and third party contractors except this Agreement and the Related Documents in making the decision to invest.

**Section 16.14. Arbitration Clause.**

Any and all disputes arising under or relating to the interpretation or application of this Agreement shall be subject to arbitration in Vermont under the then existing rules of the American Arbitration Association and pursuant to the Vermont Arbitration Act, codified at 12 V.S.A. section 5651, et seq. (the "VAA"), and if any conflict exists between said rules and VAA, the VAA shall control. Judgment upon the award rendered may be entered in any court of competent jurisdiction. The cost of such arbitration shall be borne equally by the parties. Nothing contained in this Section shall limit the right of the General Partner, either on behalf of the Partnership or on its own behalf, and Limited Partner from seeking or obtaining the assistance of the courts in enforcing their constitutional or civil rights.

**ACKNOWLEDGMENT OF ARBITRATION.**

The parties to this Agreement understand that this Agreement contains an agreement to arbitrate. After signing this Agreement, or the investment subscription documents as set forth in Section 3.02(b) herein, each Partner understands that it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, each Partner agrees to submit any such dispute to an impartial arbitrator.

**Section 16.15. Reimbursement of Expenses and Costs.**

Notwithstanding anything herein to the contrary, the General Partner and its Affiliates will be reimbursed by the Partnership for all expenses and costs incurred by the General Partner or its Affiliates in exercising the duties and powers delegated to and granted the General Partner herein.

**Section 16.16. Translation of Agreement, Etc.**

Each prospective Partner, by their receipt of this Agreement, acknowledges that it is their responsibility to obtain and pay for the translation of this Agreement, Related Documents and exhibits thereto if they cannot read or understand English.

**Section 16.17. Gender Clause.**

Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm or corporation may in the context require.

Jay Peak Hotel Suites Phase II Limited Partnership Agreement

**DATED at Jay, Vermont as of the \_\_\_\_ day of \_\_\_\_\_, 2008.**

**GENERAL PARTNER:  
JAY PEAK MANAGEMENT INC.**

BY: \_\_\_\_\_  
William Stenger, President  
and Duly Authorized Agent

**INITIAL LIMITED PARTNER:  
JAY PEAK MANAGEMENT, INC.**

BY: \_\_\_\_\_  
William Stenger, President  
and Duly Authorized Agent

Jay Peak Hotel Suites Phase II Limited Partnership Agreement

**Exhibit A**

<u>Name</u>	<u>Address</u>	<u>Initial Interest</u>	<u>Capital Contribution</u>
<u>General Partner</u>			
Jay Peak Management Inc.	4850 VT. Route 242 Jay, VT 05859-9621	0.01%	
<u>Limited Partner</u>			
Jay Peak Management Inc.	4850 VT. Route 242 Jay, VT 05859-9621	99.99%	



# Jay Peak Hotel Suites Phase II L.P. Offering Memorandum

## Section 4 - Subscription Documents



## Jay Peak Hotel Suites Phase II L.P. Subscription Documents

### INSTRUCTIONS FOR COMPLETION

In connection with your subscription for an Interest in Jay Peak Hotel Suites Phase II L.P., enclosed herewith are the following documents which must be properly and fully completed, signed and returned as set forth herein:

**Exhibit A: Subscription Agreement Jay Peak Hotel Suites Phase II L.P.** - Complete as indicated. Please make your checks payable to (i) "Jay Peak Hotel Suites Phase II L.P." in the amount of \$500,000 and (ii) "Jay Peak Inc." in the amount of \$50,000, or make wire transfer(s) in said amounts (see below), being a total of \$550,000 and equaling the subscription amount to participate in the Offering.

**Exhibit B: Purchaser Investor Questionnaire Jay Peak Hotel Suites Phase II L.P.** - To be completed and signed by you.

**Exhibit C: Consent to Limited Partnership Agreement**

Please return the aforementioned subscription documents and checks or confirmation of wire transfer to the Limited Partnership c/o :

RAPID USA VISAS, INC.  
Attn: Douglas Hulme FCCA  
12820 Tamiami Trail N  
Naples  
Florida 34110  
USA

Tel USA 239.594.5400    email: [rapidusa@gmail.com](mailto:rapidusa@gmail.com)

### PAYMENT INSTRUCTIONS FOR WIRE TRANSFER:

Chittenden Bank  
2 Burlington Square  
Burlington Vermont 05401  
ABA Number: #011600062  
Credit Account: #19100316  
Credit Account: Jay Peak Hotel Suites Phase II L.P.  
For benefit of: ..... (The Investor)

## Exhibit A

### Subscription Agreement

Dated: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ (dd/mm/yyyy)

Jay Peak Hotel Suites Phase II L.P.  
4850 Route 242  
Jay, VT 05859

Subscription Agreement  
For Purchase of a Limited Partnership Interest in  
Jay Peak Hotel Suites Phase II L.P.

Gentlemen:

The undersigned (or "I" or "me" or "my," as applicable), subject to the terms and conditions herein, hereby irrevocably subscribes for one limited partnership Interest (the "Interest") in Jay Peak Hotel Suites Phase II L.P., a Vermont limited partnership (the "Limited Partnership" or "Partnership"). The minimum<sup>1</sup> capital contribution (the "Capital Contribution") is Five Hundred Thousand Dollars (US\$500,000) plus an administration fee of Fifty Thousand Dollars (US\$50,000) for a total cost of Five Hundred Fifty Thousand Dollars (US\$550,000) ("the Subscription Amount"). Payment in full for the partnership Interest purchased must accompany this Subscription Agreement.

An "Interest" is defined in the Limited Partnership Agreement as the partner's right, title, and interest in the Partnership, including any and all assets, distributions, losses, profits and shares of the Partnership, whether cash or otherwise, and any other interests and economic incidents of ownership whatsoever of such partner in the Partnership.

The undersigned agrees that the Partnership may reject this Subscription Agreement in its sole and absolute discretion within fifteen (15) days of receipt of this Subscription Agreement, if the undersigned subscriber is not an accredited investor.

I have received and read the Offering Memorandum, dated March 31, 2008, including the Limited Partnership Agreement and Exhibits thereto (the "Memorandum"), covering the sale of the Interests (the "Offering") and hereby acknowledge that I am not acting on the basis of any representations and warranties

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<sup>1</sup> The minimum Capital Contribution for purposes of this Limited Partnership for an investor seeking lawful permanent resident status under the EB-5 program under the Immigration and Nationality Act, as amended, is \$500,000. For investors not seeking the benefits of such EB-5 program, the minimum Capital Contribution may be reduced at the sole discretion of the general partner.

other than those contained in the Memorandum. I hereby acknowledge that all matters relating to the Memorandum have been explained to me to my satisfaction and approval, and that I understand the speculative nature and the risks involved in the proposed investment. I agree to be bound by all of the terms and conditions of the Offering made by the Memorandum, the exhibits thereto, and the Limited Partnership Agreement.

I realize that (i) an investment into the Partnership is of a speculative nature and may result in a loss of my entire investment; (ii) the Interests have not been registered under the Securities Act of 1933 or the laws of any state, (iii) Unless the purchaser is a resident and living in the United States, wherein Regulation D under the Act shall apply, the Interests may not be offered or sold in the United States, or to any natural person resident in the United States or to any entity formed in the United States or whose owners (directly or indirectly) are "U.S. persons" within the meaning of Regulation S issued by the Securities and Exchange Commission; (iv) the Interest is not transferable except in compliance with the restrictions on transferability indicated in the Memorandum and in the Limited Partnership Agreement and to be written on all certificates evidencing the Interest, as imposed by applicable federal and state securities laws or otherwise and, accordingly, an investment in the Partnership lacks liquidity; (v) this is not a "tax shelter" investment and the nature and tax consequences to me of an investment in the Partnership may depend upon my circumstances; and (vi) no federal or state agency has made any finding or determination as to the fairness of the Offering, or any recommendation or endorsement of the Interests.

I agree to be bound by all of the terms and provisions of the Memorandum and to perform any obligations therein imposed on a purchaser with respect to an Interest purchased as a result thereof, and I acknowledge that the Limited Partnership will be relying on the agreements and information as provided by me in determining my qualifications to invest in the Partnership.

I have accumulated a net worth of not less than \$US1,000,000, or have an individual income of not less than US\$200,000 per annum or a joint income with my spouse of not less than US\$300,000 per annum.

I reaffirm the representations concerning me made in the Investor Questionnaire and the Acknowledgment of Receipt of Memorandum, all of which are hereby incorporated herein by reference. I further represent and warrant as follows:

(a) I have read and am familiar with the Memorandum and its Exhibits;

(b) I am;

(i) A resident of, and living in the U.S. at the time of sale and therefore Regulation D of the Act shall apply; or

(ii) Not resident in the United States at this time, nor will I be at the time of sale, and therefore Regulation S of the Act shall apply;

(c) The Interest for which I hereby subscribe will be acquired solely for my account and is not being purchased for subdivision or fractionalization thereof or for the benefit of a United States person (unless that person is resident and living in the U.S) as that term is defined in Regulation S; and I have no contract, undertaking, agreement or arrangement with any person to sell, transfer or pledge to such person, or to anyone else, the Interest which I hereby subscribe to purchase or any part thereof, and I have no present plan to enter any such contract, undertaking, agreement or arrangement;



(d) The Limited Partnership has made all documents pertaining to this investment available to me and, if I so requested, to my attorney and/or accountant;

(e) I have relied solely upon the Memorandum presented by the Limited Partnership, the Exhibits to the Memorandum, and such independent investigations as made by me in making a decision to purchase the Interest subscribed for herein;

(f) I am investing in my own name; and I was not solicited by any form of general solicitation or general advertising, including, but not limited to the following:

(i) any advertisement, article, notice of other communications published in any newspaper, magazine, or similar media or broadcast over television or radio in the United States; and

(ii) any seminar or meeting whose attendees had been invited by any general solicitation or general advertising in the United States;

(g) I acknowledge an understanding of the restrictions on transferability of the Interest and realize that no transfer may occur, excepting as permitted under Article 10 of the Limited Partnership Agreement, and in any event only after registration of the Interests under the Securities Act of 1933 or pursuant to an exemption from the securities laws and regulations; and

(h) I agree that the Interest may not be sold in the absence of registration unless such sale is exempt from registration as evidenced by a written opinion of counsel of the Limited Partnership, and further that I shall be responsible for compliance with all conditions on transfer imposed by any Commissioner of Securities of any state and for any expenses incurred by the Limited Partnership for legal or accounting services in connection with reviewing any proposed transfer or issuing opinions in connection therewith.

I recognize that the offer and sale of the Interest to me was based upon my representations and warranties contained above and I hereby agree to indemnify the Limited Partnership, its general partner, its affiliates, their officers and directors, and to hold each harmless from and against all liabilities, costs or expenses (including attorney's fees) arising by reason of or in connection with any misrepresentation or any breach of such warranties by me, or my failure to fulfill any of my covenants or agreements set forth herein, or arising as a result of the sale or distribution of the Interest by me in violation of the Securities Exchange Act of 1934, as amended, the Securities Act of 1933, as amended, or any other applicable law.

This subscription and the representations and warranties contained herein shall be binding upon my heirs, legal representatives, successors and assigns.

To facilitate the expeditious administration of the business operations of the Limited Partnership, I hereby designate and appoint William J. Stenger, or his designee, my agent and attorney-in-fact in my name, place and stead to do any act or thing and to make, execute, swear to and acknowledge, amend, file, record, deliver and publish (a) any certificate of limited partnership, or amended certificate of limited partnership required to be filed on behalf of the Limited Partnership under the laws of the State of Vermont, or required or permitted to be filed or recorded under the statutes relating to limited partnerships under the laws of any jurisdiction in which the Limited Partnership shall engage or seek to engage in business; (b) any fictitious or

assumed name certificate required or permitted to be filed by or on behalf of the Limited Partnership; and (c) any other instruments necessary to conduct the operations of the Limited Partnership. Provided, however, the said agent and attorney-in-fact may not take any action which under the Limited Partnership's Agreement of Limited Partnership requires or permits the holders of the Interests to vote. The existence of this power of attorney, which shall not be affected by my disability, shall not preclude execution of any such instrument by me individually on such matter. Any person dealing with the Limited Partnership shall conclusively presume and rely upon the fact that any such instrument executed by such agent and attorney-in-fact is authorized, regular and binding without further inquiry. I shall execute and deliver to the Limited Partnership within five days after receipt of a request therefore by the Limited Partnership such further designations, powers of attorney and other instruments as the Limited Partnership shall reasonably deem necessary.

Upon the Partnership's acceptance of this Subscription Agreement and related exhibits, and receipt of the undersigned's full Subscription Amount of \$550,000 by the Limited Partnership, the Partnership shall notify the undersigned that it has accepted the subscription herein by delivering to the undersigned a fully signed copy of the Subscription Agreement and the undersigned shall be admitted as a Limited Partner of the Partnership, with a certificate evidencing the undersigned's Interest in the Partnership issued in the undersigned's name to the undersigned within a reasonable period of time.

Partnership Interests are available on a first-come, first-serve basis. Those Investors who need additional time to complete their due diligence may make a refundable deposit of US\$10,000 for up to a forty-five (45) days. As set forth in the Confidential Memorandum, after reserving an interest in the Limited Partnership by making an escrow deposit of \$10,000 with Chittenden Trust Company, FSB subject to the terms of an Investor Escrow Agreement – Initial Deposit Only, each Limited Partner shall have forty-five (45) days to conduct his due diligence, and an additional sixty (60) days thereafter to complete his investment into the Project by paying the rest of the Subscription Amount, which time periods may be extended by the general partner at its sole discretion.

If applicable to my investment in the Partnership, with respect to my qualifications as an "alien entrepreneur" for purposes of the EB-5 program under the Immigration and Nationality Act, as amended (the "EB-5 Program"), I represent, acknowledge and warrant as follows:

- (a) I, the undersigned, have attained the age of 18 years and have the legal capacity and competence to execute all necessary documents in connection with this Offering and to take all actions required pursuant to those documents;
- (b) I shall hire independent counsel for immigration processing and other legal matters. The undersigned shall be responsible for payment of my own legal fees and costs;
- (c) Jay Peak Hotel Suites Phase II L.P. and the general partner shall use their reasonable best efforts without charge to assist my counsel with the filing of my I-526 and I-829 petitions, and to verify required direct and indirect employment until the removal of my conditions to obtaining permanent residency;
- (d) I understand that upon subscribing to this Offering and becoming a limited partner, it is at the sole responsibility and risk of the undersigned to file my I-526 petition. There is no refund of my Subscription Amount for failure to file my I-526 petition.

(e) I understand that in the event my I-526 petition is denied at any time, my rights are limited solely to the return of my \$500,000 Capital Contribution (but not the \$50,000 administration fee) within ninety (90) days of written request therefor to the general partner, unless said denial is based on fraud or material misrepresentation of the undersigned in which event no refund shall be due. The returned \$500,000 Capital Contribution is separate from any previously paid or currently due Partnership distribution of profits;

(f) I understand that the regional center pilot program, created in support of the EB-5 Program and further described in the Memorandum (the "Pilot Program"), has sunsetted in the past, only to be reauthorized retroactively so that no investor rights were prejudiced by a lapse in the program. The same scenario may occur should the current Pilot Program lapse on September 30, 2008, but this result cannot be assured. If the Pilot Program lapses on September 30, 2008, and my I-526 petition is filed with USCIS prior to that date, my \$500,000 Capital Contribution shall remain invested in the Partnership provided:

1. the Pilot Program is reauthorized retroactively or is pending reauthorization within a twelve (12) month period following its lapse, and my I-526 Petition is in due course adjudicated; or
2. legislation is enacted or pending providing substantially similar immigration benefits to foreign investors like me as under the lapsed Pilot Program and the EB-5 Program within a twelve (12) month period following the Pilot Program's lapse, and my I-526 petition is in due course adjudicated.

If neither of the events described under 1 and 2 above occur, at my option I may either remain invested in the Partnership, or request in writing a refund of my Capital Contribution of \$500,000. Upon receipt of a request of refund to the general partner, the Capital Contribution will be refunded by the Limited Partnership within a period of ninety (90) days from receipt of such request, and my Interest in the Limited Partnership shall automatically be terminated and I shall no longer have any of the rights and benefits of ownership of an Interest or any right to participate in any manner whatsoever in the affairs of the Partnership. I acknowledge that my rights in this regard are limited solely to the return of my Capital Contribution of \$500,000.

(g) If I do not have a social security number (SSN) or an individual tax identification number (ITIN) at the time of the investment, I must apply for and provide one in a timely manner after the investment and prior to any distributions to me as described in the Partnership Agreement.

**The undersigned acknowledges the receipt of a true and correct copy of the Memorandum including the Limited Partnership Agreement and agrees to be bound by its terms. My Capital Contribution shall be used to further the business purposes of the Partnership as set forth in the Limited Partnership Agreement.**

**I have the right to withdraw from this subscription within 72 hours after executing this Subscription Agreement.**

Individual Investor

Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Address \_\_\_\_\_

Country of Residence \_\_\_\_\_

Place of Birth \_\_\_\_\_

ACCEPTANCE

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, Jay Peak Hotel Suites Phase II L.P. (the "Limited Partnership") hereby accepts the subscription of \_\_\_\_\_ for one Interest, on the terms set forth herein.

Jay Peak Hotel Suites Phase II L.P.

BY \_\_\_\_\_  
Duly Authorized Agent

**Exhibit B**

**Purchaser Investor Questionnaire**

THE FOLLOWING INVESTOR QUESTIONNAIRE IS ESSENTIAL TO ENSURE THAT THIS OFFERING IS CONDUCTED IN FULL COMPLIANCE WITH REGULATION D OR REGULATION S OF THE SECURITIES ACT OF 1933, AS AMENDED. THE QUESTIONNAIRE WILL REMAIN ON FILE IN CONFIDENCE IN THE OFFICES OF JAY PEAK HOTEL SUITES PHASE II L.P. (THE "LIMITED PARTNERSHIP") FOR A PERIOD OF 4 YEARS.

YOUR COOPERATION IN THE FULL COMPLETION OF THE INVESTOR QUESTIONNAIRE IS GREATLY APPRECIATED.

JAY PEAK HOTEL SUITES PHASE II L.P.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name and Address of Prospective Investor

Gentlemen:

I understand that the limited partnership interest (the "Interest") offered for sale to me by Jay Peak Hotel Suites Phase II L.P. (the "Limited Partnership") will not be registered under the Securities Act of 1933, as amended (the "Act") and applicable state securities laws (the "State Acts"). I also understand that in order to ensure that the offering and sale of the Interests (the "Offering") are exempt from registration under the Act and the State Acts, the Limited Partnership is required to have reasonable grounds to believe, and must actually believe, after making reasonable inquiry and prior to making any sale;

- that purchasers not resident in the United States at the time of the offer and purchase are purchasing for their own account and not for the benefit of a United States person, as that term is defined in Regulation S; or
- that the purchaser is resident and is living in the United States, in which event Regulation D under the Act shall apply.

In order to induce the Limited Partnership to permit me to purchase an Interest, I hereby warrant and represent to the Limited Partnership as follows:

NOTE: The information provided herein will be relied upon in connection with the determination as to whether you meet the standards imposed by Regulation D or Regulation S promulgated under the Act, since the Interests offered hereby have not been and will not be registered under the Act and are being sold in reliance upon the exemption provided by Regulation S or Regulation D as applicable to the Investor. All information supplied will be treated in confidence; except that this Questionnaire may be presented to such parties as deemed appropriate or necessary to establish that the sale of an Interest to you will not result in violation of the exemption from registration under the Act which is being relied upon in connection with the sale of the Interest.

INSTRUCTIONS: Please answer each question fully and attach additional information, if necessary. If the answer to any question is "None" or "Not Applicable" please so state. Please sign and date the Questionnaire on the final page.

1. Name: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ (mm/dd/yyyy)  
Firm Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
Business Telephone Number: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

2. (a) Education: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other specialized Education or Instruction:

\_\_\_\_\_  
\_\_\_\_\_

- (b) All Professional Memberships or Licenses:

\_\_\_\_\_  
\_\_\_\_\_

3. Occupation

Present occupation (with date of commencement):

\_\_\_\_\_  
\_\_\_\_\_

Occupations during last five years (with dates):

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4. My net worth or joint net worth with my spouse is at least \$US \_\_\_\_\_. My proposed investment will ☐ will not ☐ exceed ten percent of my net worth.

5. My income ☐ has ☐ has not exceeded \$US200,000 in each of the two most recent years, and I ☐ have ☐ do not have a reasonable expectation of reaching the same income level in the current year.

My joint income with my spouse ☐ has ☐ has not exceeded \$US300,000 in each of the two most recent years, and I ☐ have ☐ do not have a reasonable expectation of reaching the same income level in the current year.

6. I do not have any other investments or contingent liabilities which I reasonably anticipate could cause the need for sudden cash requirements in excess of cash readily available to me.

☐ Yes ☐ No

7. I have checked my investment objectives where applicable:

☐ Income ☐ Appreciation ☐ Other

8. I can bear the risk of the proposed investment, including the loss of my entire investment, a lack of liquidity in the investment or an inability to sell the investment for an indefinite period of time.

☐ Yes ☐ No

9. I learned about this investment in the following manner (check each applicable line).

- ☐ Personal contact or acquaintance  
☐ Investment adviser or counselor  
☐ Prior investment or Association with the Limited Partnership

- ☐ Broker-dealer
- ☐ Affiliation with business or management
- ☐ Immigration Research
- ☐ Other (please state):

10. I have received a copy of the Offering Memorandum, dated March 31 2008, and all Exhibits thereto (the "Memorandum") setting forth information relating to the Limited Partnership and the terms and conditions of a purchase of an Interest, as well as any other information I deemed necessary or appropriate to evaluate the merits and risks of an investment in the Interest. I further acknowledge that I have had the opportunity to ask questions of, and to receive answers from, representatives of the Limited Partnership concerning the terms and conditions of the Offering and the information contained in the Offering Memorandum:

☐ Yes      ☐ No

Name and position of person talked to (if applicable): \_\_\_\_\_

I acknowledge that the individual(s) to whom I have spoken did only clarify the information contained in the Memorandum and that I am continuing to rely solely upon the information, representations and disclosures contained in the Memorandum.

11. If I am an EB-5 Investor, with respect to my qualifications as an "alien entrepreneur" for purposes of the Regulations to the Immigration and Nationality Act, as amended, I represent and warrant that:

- (a) I have attained the age of 18 years and have the legal capacity and competence to execute all necessary documents in connection with this Offering;
- (b) I have complied and will continue to comply with all the requirements, terms and conditions prescribed by U.S. Citizen and Immigration Services and the U.S. Department of State in connection with my forthcoming petition as an EB-5 fifth employment-based visa preference "alien entrepreneur" and subsequent applications for lawful permanent residence;
- (c) I have accumulated a net worth of not less than \$US1,000,000; or an individual income in excess of \$200,000 each of the two most recent years; or a joint income with my spouse in excess of \$300,000 in each of the two most recent years and reasonably expect to reach the same income level in the current year;
- (d) I am in good health and know of no health impairment which would likely result in exclusion under the Immigration and Nationality Act, as amended; and



(e) I have never been convicted of any criminal offense or engaged in any acts which constitute crimes of which I have not been convicted and I do not know of any facts which would result in my failure to meet the requirements of an "alien entrepreneur" or to be admitted to the United States as a lawful permanent resident.

12. I was not solicited by any general form of advertisement for this investment.

13. I am aware that there are limitations on my ability to sell the Interest and that the certificate evidencing the Interest will carry a restrictive legend.

14. I am purchasing the Interest for personal investment and without a view to redistribution.

15. I represent and warrant to the Limited Partnership and its general partner that the information contained in this Investor Questionnaire is true, complete and correct.

16. I agree to notify the Limited Partnership promptly of any change in the foregoing information which may occur prior to transfer of the Interest to me.

Dated: \_\_\_\_\_ Investor Signature: \_\_\_\_\_

**Exhibit C****Consent to Limited Partnership Agreement**

The undersigned hereby consents (the "Consent") to the terms and conditions of the Limited Partnership Agreement (the "Agreement") of Jay Peak Hotel Suites Phase II L.P. (the "Partnership") in connection with the undersigned's subscription for a limited partnership interest in the Partnership (an "Interest") for an aggregate cost of \$US550,000, comprised of the Capital Contribution of US\$500,000 plus an administration fee of US\$50,000 for a total cost of US\$550,000, and agrees that this Consent shall constitute the equivalent of signing the Agreement.

The undersigned also confirms and attests that I have received and reviewed, and understand and am fully satisfied with, all of the information and documentation I consider necessary or appropriate in deciding whether to purchase an Interest in the Partnership, including but not limited to the Memorandum dated March 31, 2008, all exhibits thereto and all financial information disclosed therein or under the Agreement; have had the opportunity to ask questions and receive answers from the General Partner (as defined in the Agreement) and the Partnership regarding the terms and conditions of the purchase of an Interest in the Partnership, and regarding the business, properties, prospects, and financial condition of the Partnership; and have had the opportunity to review the books and records of the Partnership and to obtain additional information (to the extent the Partnership possessed such information or could acquire it without unreasonable effort or expense) necessary to verify the accuracy of any information furnished to me or to which I have had access.

Signed: \_\_\_\_\_  
The Investor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Please Print



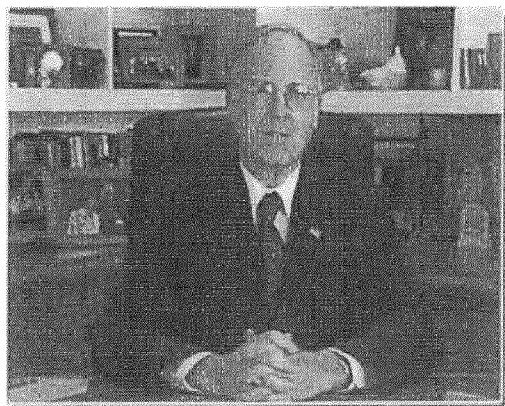
# Jay Peak Hotel Suites Phase II L.P. Offering Memorandum

## Section 5 - Exhibits





## Jim Douglas, Governor State of Vermont



View this speech online at:

[www.eb5greencard.com/jimdouglas.php](http://www.eb5greencard.com/jimdouglas.php)

### Transcript:

Hello, I am Jim Douglas; the Governor of the State of Vermont located in northern New England, one of Americas most scenic and historic regions.

I am very pleased to say a few words about Vermont's Regional Center EB-5 projects and in particular Jay Peak Resorts program which has been especially active since 2004 when the U. S. Citizenship and Immigration Service made the programs more functional nationally.

Since then Jay Peak Resort in partnership with the State of Vermont Agency of Commerce has successfully implemented its first job creating EB-5 project.

In this first phase the resort is welcoming 35 investors to the United States who will have contributed 17.5 million dollars to the Vermont economy and created jobs for more than 350 Vermonters. With phase I such a success additional phases are now being launched that will further expand Jay Peak into a true 4 season resort.

Jay Peak has been one of Vermont's most successful resorts for over 50 years, led by Bill Stenger one of Vermont's most respected business leaders and the leader in the Vermont ski industry for over 20 years the Jay Peak EB-5 project became Vermont's first Regional Center Pilot Program, its most successful to date.

I hope you'll visit the resort and see for yourself what Jay Peak has to offer.

**DRAFT FORM OF**  
**PURCHASE AND SALE AGREEMENT**

IN CONSIDERATION of the mutual covenants contained herein, **JAY PEAK, INC.**, a Vermont corporation authorized to do business in Vermont and with a principal place of business in Jay, Vermont, USA (the "Seller") and **JAY PEAK HOTEL SUITES PHASE II L.P.**, a Vermont limited partnership with its principal place of business in Jay, Vermont, USA (the "Buyer"), agree as follows (the "Agreement" or the "Contract"):

1. **Sale and Purchase of Real Estate.** Subject to the terms and conditions hereof, the Seller agrees to sell and the Buyer agrees to purchase a certain parcel of real property located in Jay Peak Resort in Jay, Vermont, USA (the "Resort"), as shown on a map entitled "\_\_\_\_\_" attached hereto as Exhibit A and incorporated by reference, and more particularly described in Exhibit B attached hereto and incorporated by reference (the "Property").

2. **Purchase Price.** Buyer agrees to pay and convey, as applicable, and Seller agrees to accept for the Property total consideration valued at Seven Million Eight Hundred Thousand and 00/100 Dollars (\$7,800,000.00) (the "Purchase Price"), which will be paid and transferred as follows:

A. Four Million Two Hundred Thousand and 00/100 Dollars (\$4,200,000.00) (the "Cash Price") over time in installment payments, with an initial payment of \$50,000.00 payable at time the Agreement is signed or within thirty (30) days thereafter (the "Initial Installment"), and the balance of \$4,150,000.00 payable in full on or before July 15, 2009, as set forth in the schedule of payments attached hereto as Exhibit C and incorporated by reference. The Cash Price will be paid by Buyer directly to Seller or its assignee; and

B. The balance of said Purchase Price will be made by Buyer's conveyance of two (2) condominium units to Seller (the "Resort Owner Units"), one unit comprised of one floor (the "Hotel Building Resort Owner Unit") in a building to be constructed on the Property by Buyer to include a hotel (the "Hotel Building"), and the second unit (the "Administrative Offices Unit") comprised of a building housing administrative offices, a grocery and deli (the "Administrative Building", and collectively with the Hotel Building, the "Buildings"), which Buildings and appurtenant common elements and limited common elements will be dedicated to condominium ownership (the "Condominium"), pursuant to plans and specifications commissioned by Buyer with Seller's prior consent. The Units are collectively priced at \$3,600,000. The Units will be conveyed by Buyer to Seller by Vermont Warranty Deed in the form and substance acceptable to Seller's attorney at such time as the Seller may request, but in no event later than that date on which the Condominium regime documents, including but not limited to a declaration of condominium, are recorded by Buyer in the Land Records of the Town of Jay, Vermont USA. All documents necessary to properly convey the Units to Seller, including without limitation the warranty deed, property transfer tax return and any other tax or other customary forms required at the closing of conveyance of real estate, will be prepared by Buyer's counsel at Buyer's cost. The Seller shall bear the expense and shall pay the Vermont Property Transfer Tax due on the conveyance of the Units. If any withholding taxes are due in connection with the transfer of title of the Units, the parties will comply with state and federal law in making such withholding

payments and cooperate in completing and filing the necessary forms with the applicable taxing authorities. Seller shall be responsible for the build out of the Units and Seller may occupy and build out these Units prior to the conveyance of the Units to Seller.

3. **Property.**

A. Buyer intends to build the Hotel Building on the Property for purposes of operating a hotel in the Hotel Building (the "Hotel"), which Hotel will comprise the third unit of the Condominium regime. Seller will reasonably cooperate with Buyer, at Buyer's expense, to obtain all required permits necessary to subdivide the Property from the Resort, to construct the Buildings and to operate the Hotel (collectively, the "Project"), and will execute all documents reasonably required to accomplish such objectives, including but not limited to all permit applications, in the joint names of Seller and Buyer where appropriate in Seller's sole discretion. Closing will not occur and title to the Property will not transfer to Buyer until such subdivision permits have been obtained and any appeal periods have expired without appeal being taken.

B. Seller represents and warrants that in connection with Buyer's development plans, Seller will make available sufficient water and wastewater capacity to enable the Hotel operation of the Project, out of the Resort's allocated reserves located on site at the Resort or thru municipal utility connections, as set forth in an Offering Memorandum of the Buyer, a copy of which Seller acknowledges by its signature hereto having received. The parties will enter into one or more reciprocal easement and maintenance agreements, at Closing or thereafter at Seller's request, to insure access to the Project and the Resort for the guests of the Hotel and the Resort, and to set forth certain obligations regarding maintenance of the improvements at the Project in conformity with the rest of the Resort.

C. Following Closing, Buyer will maintain comprehensive general liability insurance on the Property, and prior to the start of construction on the Project will purchase and continue to maintain casualty (including builders risk) insurance in amounts reasonably satisfactory to Seller, naming Seller as an additional insured and with at least thirty (30) days prior written notice of cancellation to Seller, and Buyer will furnish to Seller upon request written binders for such insurance for Seller's review.

4. **Closing.** The closing ("Closing") shall be held on a time and date and at a location mutually agreed to by the parties, but in no event later than that date on which the Cash Price is paid in full. In the event the Cash Price is not paid in full, permits necessary for subdivision or construction of the Buildings cannot be obtained or any other event occurs that in the sole reasonable discretion of Seller makes the purpose of this Agreement no longer feasible, the Seller may cancel and void this Agreement and refund back to the Buyer all installments paid by Buyer towards the Cash Price, except for the Initial Installment and any sums reasonably expended by Seller out of the Cash Price in reliance on the Project going forward, including without limitation all costs, expenses and fees expended by Seller in preparation of this Agreement and in connection with the Project.

5. **Transfer Documents.** At a time mutually convenient to both parties, but in no event later than forty-five (45) days following receipt of local and state subdivision permits (as set forth above in Section 3) and the expiration of any appeal periods without appeal being taken (the "Possession

Date”), Seller shall cause to be delivered to Carroll & Scribner, P.C., 84 Pine Street, Burlington, Vermont 05401 (“Escrow Agent”), on behalf of Buyer, a Vermont Warranty Deed conveying the Property to Buyer in the form and substance acceptable to Buyer’s attorney. Seller shall be responsible for preparing the Warranty Deed, Vermont Property Transfer Tax Return and any other tax or other customary forms required at the closing of conveyance of real estate (collectively, together with any other documents required by the parties if so referenced in this Contract, the “Escrow Documents”), which shall all be delivered to Escrow Agent to hold in Escrow (as defined in Section 6) until the Closing. At Closing, the Escrow Agent shall release the Escrow Documents to Buyer together with all building, land use and subdivision permits to the extent assignable and not otherwise automatically transferable triggered by the conveyance of the Property. Notwithstanding the foregoing, Buyer shall enjoy possession as of the Possession Date and shall have the right and obligation to construct the Buildings and develop the Project, as set forth in Section 3, prior to the Escrow Documents getting released by the Escrow Agent, provided that construction shall not occur until all local and state permits required to commence construction have been obtained (see Section 3).

Buyer agrees that it is familiar in all respects with the condition of the Property and agrees to accept the Property in its “AS IS” condition, subject to the requirement that permits necessary to the subdivision and development of the Property with commercial buildings, including the Hotel, are obtained. Buyer agrees, notwithstanding any other language to the contrary in this Contract, that the foregoing agreement may be repeated in the Warranty Deed delivered by Seller, that subsequent to receiving such Warranty Deed Buyer shall hold Seller harmless from any claimed defect of the Property, and that the language of this provision shall survive the transfer of title.

6. **Property Transfer/Land Gains/Withholding Taxes.** The Buyer shall bear the expense and shall pay the Vermont Property Transfer Tax due on the sale of the Property. The Seller shall bear the expense and pay any Vermont Land Gains Tax due on the sale of the Property. If any withholding taxes are due in connection with the transfer of title of the Property, the parties will comply with state and federal law in making such withholding payments and cooperate in completing and filing the necessary forms with the applicable taxing authorities. All such taxes, together with all costs to record such Escrow Documents as is required by state law, shall be held in Escrow by the Escrow Agent in its lawyers trust account and shall be released to the appropriate state taxing and local town authorities upon the release of the Escrow Documents (collectively, such taxes, recording fees and Escrow Documents are referred to herein as the “Escrow”).

7. **Examination of Title.** On or before forty-five (45) days prior to Closing, Seller shall procure for Buyer’s benefit, from a nationally recognized title insurance company (the “Title Insurer”), a title insurance commitment (the “Title Commitment”) in an amount acceptable to Buyer in its sole discretion but in no event greater than the Cash Price, which shall disclose the state of the title to the Property and shall constitute the commitment of the Title Insurer to insure the title in the name of Buyer, with a title insurance policy in an ALTA standard form of owners title insurance (the “Title Policy”).

The Title Commitment shall be on the ALTA standard form and shall contain no exceptions other than the usual standard printed exceptions, exceptions for current real property taxes, and such easements and restrictions of record, zoning and building ordinances and other matters as may be approved by Buyer. Upon receipt by Seller, the Title Commitment shall be delivered to Buyer for its review and the review of its counsel and Buyer shall have ten (10) days after receipt of delivery of the

Title Commitment within which to notify the Seller, in writing, of Buyer's disapproval of any exception(s) shown in said Title Commitment. In the event of such disapproval, Seller shall have ten (10) days following receipt of such notice from Buyer within which to either (a) remove any disapproved exception(s) or matter(s), or (b) notify Buyer that Seller, despite its best efforts, is unable to remove any disapproved exception(s) or matter(s). In the event Seller notifies Buyer that it is unable to remove said items, Buyer shall proceed to Closing with the benefit of Seller's warranties in the deed of transfer, provided that such item(s) do not prevent Buyer from constructing the Buildings, operating the Hotel or selling interests in the Hotel or the Hotel itself.

The standard exceptions for mechanic's and materialmen's liens and parties in possession shall be removed from the Title Policy based on an affidavit and indemnity agreement satisfactory to the Title Insurer, to be signed by Seller. The standard survey exception shall be deleted from the Title Policy based upon a survey of the Property to be done at Seller's expense in connection with the subdivision of the Property. The Seller shall insure that the Title Policy gets issued to Buyer, at Buyer's expense, within forty-five (45) business days after the applicable Escrow Documents get recorded in the Land Records of the Town of Jay.

8. **Closing Adjustments.** The following, if applicable, shall be apportioned as of the date of Closing from the beginning of the current taxable periods for each taxing authority: all property taxes, water, sewer or other municipal charges. Should any tax, charge or rate be undetermined on the date the Escrow Documents are released at Closing, the last determined tax, charge or rate shall be used for the purposes of apportionment.

9. **Binding Effect.** This Contract shall be binding upon the parties upon acceptance by the Seller. This Contract shall inure to the benefit of and be binding upon the successors and assigns of the parties. This Contract contains the entire agreement by and between the parties hereto, superseding any and all prior agreements, written or oral, affecting said Property. This Contract shall be governed by the laws of the State of Vermont.

10. **Modification and Amendment.** No modification, amendment or deletion affecting this Contract shall be effective unless in writing and signed by all parties.

11. **Realtor's Commission.** The Seller and Buyer acknowledge and agree that there is no real estate agent or broker involved in the sale of the Property.

12. **Notices.** Notices required to effect the terms of this Contract shall be effective only if hand delivered or deposited in the U.S. Mail, postage prepaid, to the addresses listed below.

13. **Arbitration Clause.** Any and all disputes arising under or relating to the interpretation or application of this Agreement shall be subject to arbitration in Vermont under the then existing rules of the American Arbitration Association and pursuant to the Vermont Arbitration Act, codified at 12 V.S.A. section 5651, et seq. (the "VAA"), and if any conflict exists between said rules and VAA, the VAA shall control. Judgment upon the award rendered may be entered in any court of competent jurisdiction. The cost of such arbitration shall be borne equally by the parties. Nothing contained in this Section shall limit the right of the parties from seeking or obtaining the assistance of the courts in enforcing their constitutional or civil rights.



#### **ACKNOWLEDGMENT OF ARBITRATION.**

The parties to this Agreement understand that this Agreement contains an agreement to arbitrate. After signing this Agreement, each party understands that it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, each party agrees to submit any such dispute to an impartial arbitrator.

#### **14. Escrow Provisions.**

A. All Escrow Documents and cash for taxes or expenses are held by Escrow Agent in its capacity as agent. Escrow Agent shall not have any liability of any kind or nature hereunder except if Escrow Agent willfully and in bad faith breaches any of its duties and obligations hereunder. Escrow Agent's duties and obligations to the parties are strictly limited to those expressly set forth in this Agreement. Escrow Agent hereby agrees to perform all express rights, duties and obligations required of it hereunder in good faith in accordance with the terms of the provisions of this Agreement. Escrow Agent shall not be required to give any bond or other security for the faithful performance of its duties hereunder.

B. In the event of a dispute between the parties regarding this Agreement or the release of the Escrow Documents or the disbursement or application of funds from the Escrow Account, Escrow Agent may, at its option, either take no action whatsoever, or interplead the parties at the expense of the parties and deposit the cash and Escrow Documents in court in a proceeding to resolve such dispute, in either case, without liability to Escrow Agent.

C. The parties hereby expressly waive any rights they have or may have to terminate or dismiss Escrow Agent as Escrow holder.

D. The parties jointly and severally agree to indemnify and hold Escrow Agent harmless from and against any loss, damage, costs, charges, judgments, attorney fees or other sums that Escrow Agent may suffer, incur or pay, arising out of or in connection with the execution and/or performance of this Agreement, except to the extent that such loss, damage, costs, charges, judgments, attorney fees or other sums is due to Escrow Agent's willful and bad faith breach of the terms of this Agreement. The parties jointly and severally shall at their expense defend any action or proceeding instituted against Escrow Agent that relates, directly or indirectly, to the subject matter of this Agreement except to the extent it relates to the willful and bad faith breach of this Agreement by Escrow Agent; provided, however, if Escrow Agent elects to defend itself in any such action, it shall be privileged to do so and the reasonable expense of such defense shall be borne jointly and severally by the parties.

E. The parties acknowledge and agree by their signatures hereto that Escrow Agent may render legal services and advice to either party, except if a dispute or litigation arises between the parties, notwithstanding its role as Escrow Agent hereunder.

**JAY PEAK HOTEL SUITES PHASE II L.P. ("Buyer")**

BY: Jay Peak Management Inc., General Partner

By: \_\_\_\_\_  
William Stenger, President and Duly  
Authorized Agent  
Date \_\_\_\_\_

EIN # \_\_\_\_\_

Address: 4850 VT Route 242  
Jay, Vermont 05859-9621

The terms and conditions of this Contract are hereby accepted by Seller who certifies that it is the sole legal owner of the Property and that it is competent to enter into this Contract and has the authority to execute and be bound by this Contract.

**JAY PEAK, INC. ("Seller")(or its successors or assigns)**

BY: \_\_\_\_\_  
William Stenger, President. and Duly  
Authorized Agent  
Date \_\_\_\_\_

EIN # \_\_\_\_\_

Address: 4850 VT Route 242  
Jay, Vermont 05859-9621

**Exhibit A**

**SURVEY MAP**

**Exhibit B**

**REAL PROPERTY DESCRIPTION**

**Exhibit C**

**SCHEDULE OF PAYMENTS**

\$200,000 MONTHLY COMMENCING 30 DAYS FROM EXECUTION OF CONTRACT

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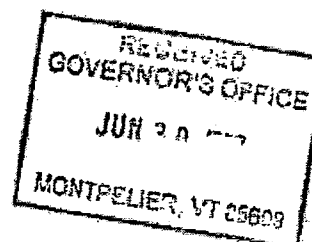
U.S. Department of Justice  
Immigration and Naturalization Service

HQ 70/8.5-C

425 I Street NW  
Washington, DC 20536

Howard Dean, MD  
Governor  
Office of the Governor  
State of Vermont  
Montpelier, Vermont 05609

JUN 26 1997



RE: Application for Designation as a Regional Center for the  
State of Vermont, Agency of Commerce and Community Development

Dear Mr. Dean:

Pursuant to Section 610 of the Appropriations Act of 1993, the State of Vermont, Agency of Commerce and Community Development (ACCD) has been designated as a regional center to participate in the Immigrant Investor Pilot Program. As of this date, aliens seeking immigrant visas through the Immigrant Investor Pilot Program may file individual petitions with the Immigration and Naturalization Service (Service) for new commercial enterprises located within the State of Vermont.

Alien entrepreneurs who file petitions for commercial enterprises located within the State of Vermont must fulfill all of the requirements set forth in 8 CFR 204.6, except that the petition need not show that the new commercial enterprise hired ten new employees as a result of the alien entrepreneur's investment. The petition may contain evidence that the investment indirectly created or will create full-time positions for not fewer than ten persons, using economically or statistically valid methodologies as described in 8 CFR 204.6(j)(4)(iii), through revenues generated from increased exports resulting from the Pilot Program.

The designation by the Service of the State of Vermont as a regional center does not reflect any determination by the Service on the merits of individual petitions filed by alien entrepreneurs under the Investor Pilot Program. All petitions for alien entrepreneurs who invest within the regional center will be adjudicated by the Service on a case-by-case basis and each petition must be fully documented. The individual petitions must be submitted to the Vermont Service Center.

If you have any questions concerning Vermont ACCD's designation under the Immigrant Investor Pilot Program, please contact Katherine Lorr at (202) 514-5014.

Sincerely,

Michael L. Aytés  
Assistant Commissioner



U.S. Citizenship  
and Immigration  
Services

MAR 19 2007

HOOPRD 70/6.2.8

Kevin L. Dorn  
Secretary of the Vermont Agency of Commerce and Community Development  
National Life Building  
Montpelier, VT 05620-0501

John W. Kessler  
General Counsel  
Vermont Agency of Commerce and Community Development  
National Life Building, Drawer 20  
Montpelier, VT 05620-0501

Re: Vermont Agency of Commerce and Community Development (VACCD) Regional Center  
Amendment

Pursuant to Section 610 of the Appropriations Act of 1993, on June 26, 1997, the Vermont Agency of Commerce and Community Development (VACCD) was initially approved and designated by the former Immigration and Naturalization Service (INS) as a regional center to participate in the Immigrant Investor Pilot Program for the purpose of attracting immigrant investor capital into the State of Vermont.

In a letter from U.S. Citizenship and Immigration Services (USCIS) dated July 14, 2006, the VACCD Regional Center was asked to provide an update on the activities and present status of its regional center since its designation by the former INS in 1997. In a August 23, 2006 response to USCIS, it was explained that Vermont's regional center program had not successfully solicited EB-5 immigrant investor capital primarily because of problems which occurred in the EB-5 program overall at the time of the Vermont designation with respect to the legacy INS' suspension of the program to address practices by various agent/attorneys and immigrant investors to apparently circumvent the capital and job creation requirements intended both in the statute and the regulations governing the program. The August 23<sup>rd</sup> response further stated the state's firm intent to resurrect and restart its regional center, and that it desired to amend its regional center designation to recognize that job creation need not be based on export sales (as provided by the 2000 and 2002 amendments to the statute) and to accommodate a broader focus by the regional center on multiple business sectors of the state such as dairy farming, specialty foods processing, environmental research and its technical applications, incubator businesses, manufacturing in all sectors, as well as its initial focus on Hospitality Lodging, Restaurants, Retail and Commercial Resort activities.

Towards this end, in a subsequent letter dated November 16, 2006, the Governor of Vermont:

1. Designated the Secretary of the VACCD to serve as the principal representative of the VACCD in its capacity as a regional center;
2. Designated the General Counsel of the VACCD to function as the principal administrator of the VACCD Regional Center; and
3. Authorized that Jay Peak Hotel Suites L.P., which had been identified as a possible major commercial enterprise at the time of Vermont's 1997 regional center application, now assist in the management, administration and overall compliance of the immigrant investor initiative for the Jay Peak Luxury Suites Hotel commercial resort improvement project.

On January 31, 2007 VACCD requested approval to amend its regional center designation as follows:

1. That USCIS review and approve, for purposes of the restarted operation of the VACCD Regional Center, the executed Memorandum of Understanding between the State of Vermont Agency of Commerce and Community Development and Jay Peak Hotel Suites, L.P. by which Jay Peak Hotel Suites, L.P. will carry out its development project and is authorized:
  - a. To create an EB-5 Alien Entrepreneur investment project within the VACCD Regional Center focused on the development and operation of a resort hotel suite project.
  - b. Managing and operating this hotel suite investment enterprise; and
  - c. To identify and recruit viable foreign investors for the hotel suite investment enterprise.
2. To augment the original VACCD Regional Center's economic impact and job creation analysis and model, replacing it with a December 1, 2006 Job Impact Analysis for the Jay Peak Resort Expansion based on the Regional Dynamics Economic Analysis Model, commonly referred to as REDYN.
3. To replace the Jay Peak Resort initial business plan which had been a supplement to the VACCD Regional Center's initial request as reflected in its initial June 1997 designation by the former INS, with a business plan that is current, more detailed and focused on a Jay Peak Resort Hotel Suites Project to include:
  - a. A luxury hotel comprised of 57 exclusive suites;
  - b. 25,000 square feet of commercial space on two floors which will contain a wide range of commercial and recreational activities as follows: ski rental facilities; children's nursery school facilities; supermarket and delicatessen; hair and beauty salon; a full service restaurant; a bar and lounge; a coffee shop and snack bar; a fast food carry-out facility; and retail units for stores and shops to lease out to vendors.



Based on its review and analysis of the January 31, 2007, request to amend the previous VACCD Regional Center designation, USCIS approves this amendment to the designation, business plan and job creation analysis and multipliers for the VACCD Regional Center reflecting the above 3 changes. In accepting the amendment, USCIS has updated its records of the VACCD Regional Center approval and designation, business plan, and job creation methodology to encompass these amendments.

As such, aliens seeking immigrant visas through the Immigrant Investor Pilot Program may file individual petitions with USCIS for the Jay Peak Resort project which is located in a rural area within the VACCD Regional Center geographic area comprised of the entire State of Vermont. Therefore, the minimum capital investment threshold for any individual immigrant investment into the Jay Peak Hotel Suite Project through the VACCD Regional Center shall be not less than \$500,000.

Alien entrepreneurs who file petitions for investments located in the VACCD regional center must fulfill all of the requirements set forth in 8 CFR 204.6, except that the petition need not show that the new commercial enterprises created ten new jobs indirectly as a result of the alien entrepreneur's investment. This determination has been established by way of the USCIS' acceptance within the approved amendment of the VACCD Regional Center's new Job Impact Analysis for the Jay Peak Resort Project utilizing the Regional Dynamics Economic Analysis Model, commonly referred to as REDYN.

However, where preservation or creation of "direct jobs" is claimed in support of an immigrant investor's individual I-526 petition affiliated with the VACCD Regional Center, then:

- To be credited for preserving/maintaining pre-existing direct jobs for "qualified employees" within the VACCD Regional Center for a "troubled business" as defined by the regulations at Part 204.6(e), the individual I-526 petition must be supported by probative evidence of the number of full time (35 hours per week) qualified employees for the 1 to 2 years prior to filing the petition whose positions shall be preserved/maintained throughout the alien's period of conditional residency. Such evidence should include copies of quarterly state employment tax reports, Forms W-2, Forms I-9, and any other pertinent employment records sufficient to demonstrate the number of "direct" qualifying pre-existing full time jobs in the enterprise preserved/maintained, and any other pertinent employment records sufficient to demonstrate the number of employees before the investment.
- To be credited with projected creation of new "direct" jobs for "qualifying employees" upon filing the I-526 petition, then the petition must be supported by a comprehensive detailed Jay Peak Luxury Hotel Suite Project business plan and supporting financial, marketing and related data and analysis providing a reasonable basis for projecting creation of the new direct jobs.

Each individual petition, to demonstrate that it is associated with the VACCD Regional Center, in conjunction with addressing all the requirements for an individual alien entrepreneur

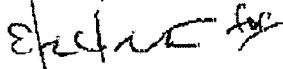
*petition, shall also contain as supporting evidence relating to this regional center designation, the following:*

1. A copy of this letter of the amended approval and designation.
2. A copy of the approved regional center narrative proposal and business plan, and the approved amendments.
3. A copy of the approved job creation methodology required in 8 CFR 204.6(j)(4)(iii), as contained in the amended regional center economic analysis which has been approved by USCIS, which reflects that investment by an individual alien investor of at least \$500,000 into the Jay Peak Resort luxury hotel project will generate full-time employment positions, either directly or indirectly, for not fewer than ten U.S. workers.
4. A signed legally executed copy of the limited partnership agreement between the Jay Peak Hotel Suites L.P. and the alien investor.

The reaffirmation by the USCIS of the designation of the VACCD as a regional center does not reflect any determination on the merits of individual petitions filed by alien entrepreneurs under the Investor Pilot Program. All petitions for alien entrepreneurs who invest within the regional center will be adjudicated by the USCIS on a case-by-case basis and each petition must be fully documented. The individual petitions must be submitted to the Texas Service Center.

If you have any questions concerning the SDIBI/DEDR approval and designation under the Immigrant Investor Pilot Program, please contact Maurice Berez, Chief Adjudications Officer, Foreign Trader, Investor and Regional Center Program, at (202) 272-8413.

Sincerely,



John M. Allen  
Acting Chief  
Service Center Operations

CC: Edward J. Carroll  
CARROLL & SCRIBNER, P.C.  
84 Pine Street, Suite 300  
PO Box 932  
Burlington, VT 05402-0932

# Jay Peak Resort Vermont



Prepared by:  
Economic & Policy Resources, Inc.

Economic & Policy Resources, Inc. is a professional economic consulting firm with home offices in Williston, Vermont. The firm has provided economic, financial and public policy services to clients throughout the eastern United States since 1983.

**Letter of Transmittal**

April 14, 2008

Mr. William Stenger  
President  
Jay Peak Resort  
Jay, Vermont 05859

Re: Jay Peak Resort EB-5 Phase II Project – Master Expansion Program –  
Jay Peak, Vermont

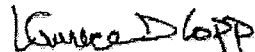
Dear Mr. Stenger:

I am transmitting with this letter an economic impact assessment of the proposed Jay Peak Resort Phase II Project in Jay, Vermont, which our firm prepared at your request. This impact assessment was undertaken to determine the direct and indirect employment impact of the Jay Peak Phase II Project. The attached report explains the methods and results of our analyses and is intended to assist Jay Peak Resort with a presentation to the U.S. Citizenship and Immigration Service EB-5 Visa Program.

We have prepared our analyses using assumptions and estimates developed from third party data sources, information you provided, research and knowledge of the industry and region developed from our many years of professional economic practice. Where we have accepted third party data and information from others we have assumed that information to be correct without further validation. In concluding our analysis we have performed a limited number of tests and cross checks to determine the internal consistency of the results and find those results to be reasonable. However, events and circumstance may cause actual results to be materially different than those reported here.

Thank you for the opportunity to work with Jay Peak Resort on this matter. We very much enjoy the professional, high quality and considerate approach taken by you and your management team in their work with us.

Sincerely,



Lawrence D. Copp  
Director and Senior Economist

LDC/bma/enclosures

## Highlights and Findings

- ❖ The proposed Phase II Jay Peak Resort expansion program includes \$75.0 million of EB-5 investor funds and an estimated \$12.0 million in additional resort owner value to develop new facilities at the resort. The investment activity is included in a resort master plan totaling \$201.1 million in new resort investment through 2015 including an additional \$114.1 million in resort hotel condominium units constructed for market sale. Included in the expansion program are visitor amenities such as a Water Park, Bowling Alley, Ice Skating Ring, and Golf Clubhouse, and additional accommodations being provided with a second full service hotel comprising 120 suites, Spa, Fitness Center, and Convention Center. Along with the development of these new facilities, Jay Peak Inc. will build 360 condominium units available to the resort's rental program developed over an eight year period. Taken altogether the expansion program is expected to increase the resort's competitive position within the eastern United States and Canadian travel and tourism markets.
  - Extensive expanded visitor amenities are expected to increase resort visitation by offering a full spectrum of recreational activities to families and by increasing the resort's offerings into spring, summer and fall seasons making the resort a year around operation.
  - Expanded overnight accommodations of 120 hotel suites are expected to increase the resort's capacity by an additional comfortable capacity of 520 overnight guests per night; with estimated maximum capacity added of 720 overnight guests per night.
- ❖ The proposed expansion will generate 2,245 full-time jobs in the U.S. economy by 2011 assuming construction work begins in the fall of 2008 and progresses through 2010 for the amenities and hotel and then through 2015 for additional condominium units.
  - Of the total 2,245 full-time jobs expected to be created, an estimated 1,532 are anticipated to be within the Vermont economy. An additional 655 full-time jobs are anticipated within the U.S. economy as an expansion of this magnitude has significant job impacts beyond the borders of a state as rural in character as Vermont.
  - Employment at the Jay Peak Resort is expected to increase by 525 full-time jobs in 2011 as a result of the proposed expansion program of the hotel and the amenities.
  - The construction and operation of the condominium expansion portion of the master plan, although not part of the EB-5 investor program will have a significant employment impact. Each

additional 48 condominium unit is expected to require 12 new direct permanent full-time jobs with the owner of the resort, Jay Peak, Inc. In addition, an ongoing hotel condominium construction program is expected to account for an additional 230 permanent full-time construction jobs. (These jobs are separated from direct employment listed in Summary Table S1 under "Indirect Employment.") The additional resort overnight capacity attributable to the hotel condominium units will bring substantial additional visitor spending to the resort and region and will increase utilization of the visitor amenities.

- o In summary, direct employment associated with the new hotel, the amenity package expansion and condominium development is projected to be 525 by the end of 2011 (Refer to Summary Table S1). Indirect employment as related to this project, net of the competitive effects of the industry and temporary construction employment, account for a full-time job creation of 1,065 within the state of Vermont. In total, the Vermont economy is estimated to grow by 1,590 permanent full-time jobs due to the Jay Peak Resort expansion.



State of Vermont  
Agency of Commerce and Community Development  
National Life Building, Drawer 20  
Montpelier, VT 05620-0501  
www.dca.state.vt.us

[phone] 802-828-3211  
[fax] 802-828-3383

March 20, 2008

Bill Stenger  
President and Chief Operating Officer  
Jay Peak Resort  
4850 VT Route 242  
Jay, VT 05859-9621

Dear Mr. Stenger:

I am pleased that the Jay Peak Hotel Phase I has been such a great success and that you are moving ahead on the Phase II of the project that includes a wide array of Hotel, Recreation and Conference Services. The EB-5 Alien Entrepreneur Program is an excellent vehicle for this project and I'm glad foreign investors continue to view Jay Peak as a great investment opportunity.

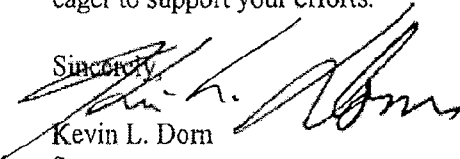
The State of Vermont was designated a Regional Center by the U.S. Immigration and Naturalization Service in 1997. As you know, Jay Peak's proposed expansion was included in the State's application to illustrate the type of project that would benefit from accessing new capital through the EB-5 program. Because Jay Peak is in a targeted employment – a rural area outside the Burlington SMSA – investments in the expansion project made through Vermont's Regional Center Immigrant Investor Pilot Program will enjoy certain added advantages. For example:

1. Investors need only commit \$500,000 U.S. instead of \$1 million;
2. Investors are under a relaxed job creation requirement, as they are permitted to count jobs created directly *as well as indirectly*; and
3. Investors may be added at any time and need not be involved at the projects inception.

The Agency of Commerce and Community Development looks forward to seeing the Jay Peak project continue to have success and I look forward to welcoming the investors to Vermont when the opportunity arises.

If the Agency can be of any additional assistance, please do not hesitate to contact me – we are eager to support your efforts.

Sincerely,

  
Kevin L. Dorn  
Secretary



**PROPOSED**  
**MANAGEMENT AGREEMENT**  
**JAY PEAK HOTEL SUITES PHASE II**

**THIS AGREEMENT** is entered into by and

**BETWEEN: JAY PEAK MANAGEMENT INC.** ("Manager"), a corporation duly organized and existing under the laws of the State of Vermont, the principal office of which is at 4850 VT Route 242, Jay, Vermont 05859-9621;

**AND: JAY PEAK, INC.**, a corporation duly organized and existing under the laws of the State of Vermont, the principal office of which is at 4850 VT Route 242, Jay, Vermont 05859-9621 ("Hotel Agent").

**RECITALS:**

**WHEREAS**, Manager is the general partner in a Vermont limited partnership known as "Jay Peak Hotel Suites Phase II L.P." (the "Owner"), pursuant to a limited partnership agreement (the "Partnership Agreement"); and

**WHEREAS**, Owner has purchased land at the Jay Peak Resort in Jay, Vermont (the "Resort") for the purpose of constructing a six-floor building (the "Hotel Building") and a two-floor building (the "Administrative Offices Building"); and

**WHEREAS**, the Hotel Building and Administrative Building will be dedicated to condominium ownership, consisting of three total units, pursuant to a Declaration of Condominium to be executed by the Owner, two of which units will be conveyed to the owner of the Resort in partial consideration for the purchase of the above-referenced land;

**WHEREAS**, Owner will retain ownership of the third unit in the Hotel Building and operate the unit as a hotel to be known as "Jay Peak Hotel Suites Phase II" or substantially similar name (such hotel, excluding the appurtenant interests in the Common Elements, referred to herein as the "Hotel"); and

**WHEREAS**, in the Partnership Agreement the Manager is delegated the duty to operate and manage the Hotel, either directly or through a designee, which designee may include any affiliates of the Manager; and

**WHEREAS**, Manager desires to retain Hotel Agent to manage the Hotel; and,



**WHEREAS**, Hotel Agent is willing to accept such employment on the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the mutual premises and the covenants herein contained, the parties agree each with the other as follows:

1. Designation of Hotel Agent. On behalf of Owner, Manager hereby appoints and designates Hotel Agent as Manager's sole and exclusive agent to manage and rent the Hotel as a hotel accommodation.

2. Hotel Agent's Authority. On behalf of Manager and in accordance with the desires and directives of the Manager, Hotel Agent shall use its best efforts in its management and operation of the Hotel to provide quality service, increase Hotel occupancy and use of function rooms, maximize distributions to Owner and comply with this Agreement, all to the full extent reasonable and prudent in consideration of the location of the Hotel and the facilities in and at the Hotel and the surrounding area in the Resort, and consistent with sound business practices.

In furtherance of the exercise of this authority, Hotel Agent, pursuant to directives from Manager, shall perform any and all acts which are necessary or desirable to operate the Hotel efficiently and economically and shall have the continuing right to institute controls, operating procedures and such other regulations. In this connection, Hotel Agent shall:

(a) Book nightly reservations at the Hotel and demand, collect, receive and receipt for nightly accommodation proceeds on Owner's behalf, in accordance with the rate structure set forth in this Agreement;

(b) Hire, train, supervise, pay and discharge all personnel required to operate a first class hotel. The terms, conditions and policies of employment of such personnel shall be determined by Hotel Agent. Such policies of employment shall include, without limitation, hiring and firing of employees, wages, profit sharing, benefit plans and insurance plans;

(c) Obtain all licenses necessary for the operation of the Hotel. Such licenses shall be held in Hotel Agent's name for the benefit of Owner and the original cost and renewal costs of such licenses shall be borne by Owner as an Operating Expense of the Hotel;

(d) Coordinate with the efforts of the Jay Peak Hotel Suites Phase II Owners Association, Inc. ("COA") and permit it to maintain and replace its furniture, fixtures and equipment ("FF&E") and to maintain all condominium Common Elements consistent with the expected standards of a first-class hotel;

(e) Allocate to and negotiate payment from the COA those portions of Hotel Operating Expenses that are reasonably deemed to benefit the COA and its members;

(f) Pursuant to budgets adopted by the Owner, replace and augment the FF&E in the Hotel, so as to maintain the standards of a first class hotel;

(g) Develop and maintain Hotel operating procedures, including, without limitation, budget, personnel and training programs, management supervisory programs and advertising/promotional campaigns;

(h) Negotiate the provisions of service and equipment contracts as Hotel Agent believes in the exercise of good judgment are usual or required in the operation of a first class hotel;

(i) Oversee the provision to all guests and others upon the Hotel premises of all food, beverages and room service; and

(j) Comply with the laws and regulations of any governmental agency having jurisdiction, as any of the foregoing may be amended from time to time.

3. Booking the Hotel. The Hotel shall be managed and reserved nightly as a hotel guests' accommodation. Manager shall cooperate with Hotel Agent in promoting and booking reservations of rooms in the Hotel.

4. Hotel Rental Rates. The Hotel Agent will periodically set rates for reserving nightly accommodations at the Hotel based on financial projections for the Hotel provided by Manager.

5. Hotel Income and Expense Allocation.

5.1 Owner's Hotel Account. Hotel Agent shall establish a hotel account (ledger account) for Owner ("Owner's Hotel Account"), which account shall be held by Hotel Agent in accordance with the terms of this Agreement, in a depository bank and type of account regarding which Hotel Agent shall make deposits in, deductions from, and distribution of, such account in accordance with the terms of this Agreement.

5.2 Hotel Agent's Fee. Hotel Agent shall pay itself from the gross revenue generated from Hotel nightly room accommodations and telephone service, on a monthly basis in arrears, a fee of fifty percent (50%) for all such gross revenues while this Agreement is in effect (the "Hotel Agent Fee").

5.3 Allocation of Rental Income. After paying itself the Hotel Agent Fee, monthly in arrears Hotel Agent shall distribute to Owner's Hotel Account the net revenues from the rental of the Hotel for the prior month. If the Hotel becomes unrentable and, therefore, payments pursuant to a business interruption insurance policy are made, those payments shall be treated as Hotel Rental Income as though paying guests occupied the Hotel.

5.4 Hotel Operating Expenses. Manager shall pay from Owner's Hotel Account the fixed expenses of operating the Hotel as a hotel ("Hotel Fixed Operating Expenses"). These Hotel Fixed Operating Expenses include taxes, utilities, insurance, maintenance, repairs and condominium assessments. All other operating expenses of running the Hotel ("Hotel Variable Operating Expenses"), will be borne and paid by Hotel Agent out of the Hotel Agent Fee. The Hotel Variable Operating Expenses include, without limitation, housekeeping, food, beverage, sales and marketing and administrative staff, costs of food, beverage, laundry, cleaning supplies, uniforms, front desk materials, reservation service fees, if any, guest room supplies, advertising, marketing, travel agent's commissions, credit card charges, legal and accounting fees, compensation of hotel personnel and other usual and customary expenses. The sum of the Hotel Fixed Operating Expenses and Hotel Variable Operating Expenses will equal the "Operating Expenses".

5.5 Owner's Net Hotel Income. The amount remaining in Owner's Hotel Account after Manager pays the Hotel Fixed Operating Expenses, but subject to any reserve allocations required under the Partnership Agreement, shall be Owner's Net Hotel Income.

5.6 Deficits. If the gross revenues generated by the Hotel for any month shall be less than the Hotel Variable Operating Expenses for such month, Hotel Agent shall be responsible for paying the amount of such deficiency out of its own funds or out of the Working Capital Reserve set forth in Section 5.7.

5.7 Working Capital Reserve. The Owner shall make an initial contribution to a Working Capital Reserve for the Hotel as projected in the financial projections for the Hotel or such lesser amount as remains after the Hotel is developed. This fund shall always be allocated to Owner and shall always remain the Owner's fund and shall be conveyed to any successor in interest to the Hotel, but Hotel Agent shall be given authority to issue checks out of this fund to cover deficiencies in monthly Operating Expenses. Hotel Agent is also responsible for replenishing the Working Capital Reserve out of its own funds to replace any funds disbursed out of the Working Capital Reserve as set forth herein.

6. Books of Account; Budgets; Financial Reports.

(a) Gross revenues and other funds used in the operation of the Hotel will be the property of Owner but in the exclusive possession and control of Hotel Agent, subject to the provisions of this Agreement. Such funds shall be maintained exclusively for Owner in a bank determined annually by Manager on behalf of Owner. Hotel Agent shall not commingle its funds with those of Owner. According to the provisions of this Agreement, Hotel Agent shall disburse funds from these accounts on behalf of Owner and shall allocate revenue and expenses as required hereunder. No funds shall be withdrawn unless by someone authorized to do so by Hotel Agent.

(b) Hotel Agent shall periodically prepare such reports, budgets or other financial data reasonably requested by Manager to meet Manager's obligations under Article XIII of the Partnership Agreement.

(c) Upon five (5) days written notice to Hotel Agent, Manager shall have the right at any time during ordinary business hours to examine, at the place where they regularly are kept, such books of Hotel Agent related to the operations of the Hotel and of any person, firm or corporation acting for, and performing the duties, functions and discretions of, Hotel Agent hereunder.

Unless the Manager on Owner's behalf disputes computation or other information within forty-five (45) days after Hotel Agent mails statements or reports, the accuracy of such reports and financial statement shall be deemed to have been accepted by Manager on Owner's behalf.

7. Taxes. Hotel Agent shall not be liable to Owner (a) for any sales tax or room tax assessed and levied by any governmental body, which tax Hotel Agent will collect separately from the room rental gross income and pay to the appropriate authority; (b) for either federal or state income or corporate excise taxes attributable to income earned by, or paid to, Owner under this Agreement; (c) for Owner's ad valorem personal and real property taxes; (d) for any assessment of any kind assessed or levied by a governmental body; or (e) all assessments by the COA against Owner or the Hotel.

8. Insurance. To the extent not already provided by the COA, Hotel Agent shall obtain and maintain such additional types of insurance such as innkeeper's liability, business interruption, completed operations, bailee-for-hire, products liability, auto liability and other coverage in such amounts and upon such terms as Hotel Agent shall determine to be prudent under the circumstances having due regard for the liability of Owner and, at a minimum, comparable to that carried on other comparable hotel properties. Owner shall be named as an additional insured on all such insurance policies. Except as stated above, Hotel Agent shall not be required to provide or maintain fire or casualty insurance of any kind with respect to the Hotel or the Common Elements and the furnishings and personal property in such Hotel and Common Elements, this being a responsibility of the COA. Premiums paid for insurance procured under this section shall be Hotel Fixed Operating Expenses.

9. Furniture, Furnishings, and Equipment.

9.1 Acquisition. Manager shall at all times maintain the Hotel and its furniture, furnishings and equipment sufficient in number, design and quality in order to operate said Hotel effectively as a first-class hotel accommodation. All such items shall remain the separate property of Owner and Hotel Agent shall not be liable for the loss, theft, damage or destruction thereof; provided, however, that such items as linens, bedspreads, glassware, chinaware, kitchen utensils, eating utensils, television sets and small appliances shall be of a standard design selected by Hotel Agent.

9.2 Replacements and Additions. On behalf of Owner, Hotel Agent shall (as a Hotel Variable Operating Expense), replace, or add to, the linens, bedspreads, glassware, chinaware, silverware, and small appliances ("Consumable FF&E") in the Hotel so as to maintain the standards of a first-class hotel. Hotel Agent shall not be required to identify and segregate in the Hotel the exact items owned by Owner, but merely to provide Hotel with the requisite number thereof, subject to the loss, damage or theft thereof for which Hotel Agent is not liable.

10. Hotel Agent's Occupancy. Manager and Hotel Agent shall each have the right to provide complimentary accommodations to such extent as Manager and Hotel Agent, respectively, may reasonably deem necessary to promote or publicize the Hotel.

11. Management Term. The agency created hereby shall commence immediately upon execution hereof and shall continue indefinitely until termination. Hotel Agent shall begin to market the Hotel at least six (6) months prior to the month Hotel is expected to open. Manager may terminate this Agreement at any time for Hotel Agent's fraud, gross negligence, willful misconduct or a material breach of this Agreement. Such termination shall be effective at the end of ten (10) days after written notice of such decision to Hotel Agent.

In addition to the foregoing methods of termination of this Agreement, it may be terminated as follows:

- (a) At any time by the mutual consent of the parties hereto.
- (b) Upon the dissolution of Owner. In such circumstances, subject to the order of a court of appropriate jurisdiction, Hotel Agent will continue to manage and operate the Hotel, pursuant to the provisions of this Agreement, on behalf of the Owner.
- (c) Upon the appointment of a receiver, trustee or liquidating agent for, or the assignment for the benefit of creditors of, all or substantially all of Hotel Agent's assets, or the bankruptcy or dissolution of Hotel Agent.

If this Agreement is terminated or the Hotel ceases to operate, then Hotel Agent shall provide to Manager on Owner's behalf a final financial statement, shall make the payment of balances in Owner's Hotel Account to Owner or as Owner shall otherwise direct, and shall yield up the Hotel in good condition and repair, excepting only reasonable wear and tear and damage by fire or other casualty.

12. Interest. Reserve funds established hereunder shall be deposited to interest-bearing accounts chosen by Manager, until withdrawn by Hotel Agent pursuant to provisions of this Agreement. Earned interest shall be credited to Owner quarterly. Advance reservation deposits shall be held by Hotel Agent as advance room revenues until earned.

13. Assignment. This Agreement may not be assigned unless by the consent of the parties, except that Hotel Agent may, from time to time, assign some or substantially all of its rights, functions and discretions to affiliated or unaffiliated subcontractors or to hotel management companies familiar with hotel operations. Such assignment shall not excuse Hotel Agent's performance under this Agreement.

Hotel Agent shall recognize and consent to a transfer of Manager's interest in this Agreement by virtue of a transfer to a controlled entity of Manager. Otherwise, Hotel Agent shall not consent to an assignment of this contract by Manager except as set forth herein.

Until Hotel Agent is satisfied that a transferee of the Hotel was fully acquainted with operations of the Hotel prior to the transfer of the Hotel and until Hotel Agent is satisfied that such transfer does not violate federal or state securities laws (and in this connection Hotel Agent may require an opinion of legal counsel satisfactory to Hotel Agent and provided by Owner at Owner's expense), Hotel Agent shall not be required to consent to such transfer.

Hotel Agent may charge the transferee an agency transfer fee of not more than 1% of the sales price for services in obtaining such consent.

Ownership of reserve accounts established hereunder shall, in the event of transfer of the Hotel, be assigned to the transferee; the transferring Owner shall thereafter have no entitlement to such funds.

14. Arbitration. Any dispute between Manager and the Hotel Agent, which has not been resolved by mediation, may be submitted to arbitration. Such submission shall be made by a disputant providing notice of arbitration to other disputants within ten (10) days after receipt of notice of the failure of mediation; or, in the matter of termination of the Hotel Agent, within ten (10) days of notice called for in Section 11.

Within ten (10) days of the giving of notice of arbitration, Hotel Agent shall choose one arbiter, the Manager shall choose one arbiter and these arbiters shall choose a third arbiter within a second period of ten (10) days. The arbiters shall apply the then current, appropriate rules of the American Arbitration Association ("AAA") and the laws of the State of Vermont, if they are not inconsistent with the rules of the AAA, and shall take testimony offered by the parties. When all evidence has been presented, the arbiters shall by majority vote resolve the issues upon application of testimony they believe is relevant and reliable. As well, they may make awards, including a determination of liability for attorneys' fees, arbitration costs, and compensation to arbiters. Their decision shall bind the parties and may be entered as a judgment under the Arbitration Act of the State of Vermont.

Hotel Agent may begin within thirty (30) days to cure diligently the basis of any arbitration decision against it. Such diligence shall include, if appropriate, the termination

of subcontractors or assignees. Failing appropriate diligent actions by Hotel Agent, the Manager may decide to terminate this Agreement.

15. Right to Compete and Contract. Hotel Agent and Manager, and in the event that Hotel Agent or Manager assigns its rights and duties hereunder pursuant to Section 13, such assignee, their partners, stockholders, officers, directors and affiliated companies, or any of them:

- (a) May build, own or manage other motels, motor inns, hotels, condominiums, restaurants or resorts and that such establishments may compete with the Hotel for convention, tourist or commercial business. None of the foregoing entities shall be disqualified from so competing with the Hotel, at the Resort or otherwise.
- (b) Shall not be disqualified from contracting with the Hotel as vendor, purchaser, contractor, supplier, purveyor of goods or services, or otherwise; provided that the charges to Hotel under such contracts shall be competitive in light of the prevailing rates for such services and goods as may be involved. All such material affiliated relationships and services shall be disclosed in reasonable detail.

16. Manager's Acknowledgements and Election. By the execution hereof, Manager recognizes that (i) Hotel Agent is not a partner or joint venturer with Manager but is the agent and independent contractor of Manager; and (ii) the relationship between Hotel Agent and Manager does not create a corporation in law or in fact. Manager on behalf of Owner further acknowledges that this Hotel operation is a speculative venture with no guaranty, in fact or by implication, that Owner shall receive any, or any specific, sum of money in any given period of time on account of its entry into this operation.

Manager further acknowledges and agrees that if, contrary to the intent of this Agreement, the relationship hereby created be deemed a general partnership, the scope thereof shall be solely the operation of the Hotel as rental accommodations and that all powers and authority of Manager to act within the scope of the partnership are vested by Manager in Hotel Agent exclusively, subject to the rights set forth in this Agreement in the Owner to operate the Hotel.

Owner expressly retains both legal title and beneficial ownership of its Hotel and its contents and its appurtenant interests in the Common Elements and their contents, and Owner is not contributing such property, or any thereof, or the use thereof, to any imagined or assumed entity. If, contrary to the intent of this Agreement, the agency relationship of Hotel Agent with Owner at the Hotel or such relationship through the Hotel Agent is deemed a partnership for federal income tax purposes, then Owner shall be deemed only to have contributed the use of the Hotel and its contents and its appurtenant interests in the Common Elements and their contents to such partnership and not to have contributed the Hotel itself or its contents or its appurtenant interest in the

Common Elements or their contents or any title thereto or interest therein to such assumed partnership and Hotel Agent shall be deemed the tax management partner of any such assumed partnership. Legal and accounting fees reasonably incurred by the Hotel Agent and other such expenses incurred by Hotel Agent acting as tax managing partner shall be Hotel Variable Operating Expenses. Hotel Agent shall vigorously deny partnership status for general law or tax purposes and may litigate to obtain refunds from the Internal Revenue Service imposed by it on account of the failure to file a partnership return.

Acknowledging that the Hotel is restricted to nonresidential hotel use, Manager agrees that if this Agreement is terminated, other rental or agency alternatives must be established to comply with use restrictions set forth by the COA.

Manager acknowledges that Hotel Agent has not given legal or tax advice.

17. Notices. Notices hereunder to Manager or Hotel Agent shall be delivered personally, or deposited in the United States Mail, certified mail, return receipt requested, postage fully paid, addressed to Manager or Hotel Agent, as the case may be, at the address first set forth above (or such more recent address of which the party addressed shall have given written notice to the other party), and shall be deemed to be given when delivered personally, or when the notice has been delivered as evidenced by the return receipt.

18. Attorneys' Fees. In litigation or arbitration arising out of this Agreement, the parties shall be responsible for their own costs and attorneys' fees incurred in such litigation, both at trial and upon appeal, if any.

19. Applicable Law. This Agreement shall be construed under, and shall be governed by, the laws of the State of Vermont.

20. Entire Agreement. This Agreement, together with any other writings signed by the parties expressly stated to be supplemental hereto and together with any instruments to be executed and delivered under this Agreement, constitutes the entire agreement between the parties with respect to the agency created hereunder and supersedes all prior understandings and writings, and may be changed only by a writing signed by the parties hereto.

21. Severability. The invalidity in whole or in part of any term, covenant or provision hereof shall not affect the validity of the remainder hereof. Any portion of this Agreement determined to be invalid or unenforceable shall, to the extent possible, be reformed to accomplish its intended effect.

22. Miscellaneous. The terms "Manager" or "Hotel Agent" wherever herein used shall include the person, or persons, named and its or their successors and permitted assignees. Where the context so admits or requires, use of the singular includes the plural, and vice versa, and use of any gender includes any or all other genders. Capitalized



terms used herein not otherwise defined shall have the meanings ascribed to them in the Declaration of Condominium.

**23. Acknowledgement of Arbitration. Hotel Agent and Manager understand that this Agreement contains an agreement to arbitrate; and, unless a question of constitutional or civil rights law is involved, Hotel Agent and Manager understand that they will not be able to litigate any dispute covered by the arbitration provisions of this Agreement. Instead, Hotel Agent and Manager agree to submit such disputes to impartial arbitration.**

DATED \_\_\_\_\_

Manager:  
JAY PEAK MANAGEMENT INC.

Hotel Agent:  
JAY PEAK, INC.

By: \_\_\_\_\_  
William Stenger, President and  
Duly Authorized Agent

By: \_\_\_\_\_  
William Stenger, President and  
Duly Authorized Agent

**MANAGEMENT AGREEMENT**

**JAY PEAK HOTEL SUITES PHASE II**

**WATER PARK**

**THIS AGREEMENT** is entered into by and

**BETWEEN: JAY PEAK MANAGEMENT INC.** ("Manager"), a corporation duly organized and existing under the laws of the State of Vermont, the principal office of which is at 4850 VT Route 242, Jay, Vermont 05859-9621;

**AND: JAY PEAK, INC.**, a corporation duly organized and existing under the laws of the State of Vermont, the principal office of which is at 4850 VT Route 242, Jay, Vermont 05859-9621 ("Agent").

**RECITALS:**

**DETAILS TO FOLLOW CONSISTENT WITH OFFERING  
AND WITH LIMITED PARTNERSHIP AGREEMENT**

DATED \_\_\_\_\_

Manager:  
JAY PEAK MANAGEMENT INC.

Hotel Agent:  
JAY PEAK, INC.

By: \_\_\_\_\_  
William Stenger, President and  
Duly Authorized Agent

By: \_\_\_\_\_  
William Stenger, President and  
Duly Authorized Agent

**MANAGEMENT AGREEMENT**

**JAY PEAK HOTEL SUITES PHASE II**

**BOWLING CENTER**

**THIS AGREEMENT** is entered into by and

**BETWEEN: JAY PEAK MANAGEMENT INC.** ("Manager"), a corporation duly organized and existing under the laws of the State of Vermont, the principal office of which is at 4850 VT Route 242, Jay, Vermont 05859-9621;

**AND: JAY PEAK, INC.**, a corporation duly organized and existing under the laws of the State of Vermont, the principal office of which is at 4850 VT Route 242, Jay, Vermont 05859-9621 ("Agent").

**RECITALS:**

**DETAILS TO FOLLOW CONSISTENT WITH OFFERING  
AND WITH LIMITED PARTNERSHIP AGREEMENT**

DATED \_\_\_\_\_

Manager:  
JAY PEAK MANAGEMENT INC.

Hotel Agent:  
JAY PEAK, INC.

By: \_\_\_\_\_  
William Stenger, President and  
Duly Authorized Agent

By: \_\_\_\_\_  
William Stenger, President and  
Duly Authorized Agent

**MANAGEMENT AGREEMENT**

**JAY PEAK HOTEL SUITES PHASE II**

**ICE SKATING ARENA**

**THIS AGREEMENT** is entered into by and

**BETWEEN: JAY PEAK MANAGEMENT INC.** ("Manager"), a corporation duly organized and existing under the laws of the State of Vermont, the principal office of which is at 4850 VT Route 242, Jay, Vermont 05859-9621;

**AND: JAY PEAK, INC.**, a corporation duly organized and existing under the laws of the State of Vermont, the principal office of which is at 4850 VT Route 242, Jay, Vermont 05859-9621 ("Agent").

**RECITALS:**

**DETAILS TO FOLLOW CONSISTENT WITH OFFERING  
AND WITH LIMITED PARTNERSHIP AGREEMENT**

DATED \_\_\_\_\_

Manager:  
JAY PEAK MANAGEMENT INC.

Hotel Agent:  
JAY PEAK, INC.

By: \_\_\_\_\_  
William Stenger, President and  
Duly Authorized Agent

By: \_\_\_\_\_  
William Stenger, President and  
Duly Authorized Agent

**DRAFT FORM OF  
GRANT OF EASEMENT AND MAINTENANCE AGREEMENT**

**THIS GRANT OF EASEMENT AND MAINTENANCE AGREEMENT** (this "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and among **SAINT SAUVEUR VALLEY RESORTS, INC.**, a Canadian corporation with its principal place of business in Jay, Vermont, or its successors or assigns, expected to be **JAY PEAK, INC.**, a Vermont corporation authorized to do business in Vermont and with a principal place of business in Jay, Vermont, USA (the "**Owner**"), **JAY PEAK HOTEL SUITES PHASE II L.P.**, a Vermont limited partnership with its place of business in Jay, Vermont ("**LP**") and **JAY PEAK HOTEL SUITES PHASE II OWNERS ASSOCIATION, INC.**, a Vermont non-profit corporation for itself and for the benefit of its members, with its place of business in Jay, Vermont (the "**Association**").

**WITNESSETH:**

**WHEREAS**, Owner is the developer of certain real property located in the Town of Jay, County of Orleans, State of Vermont, commonly known as the Jay Peak Resort (the "**Resort**"), operated and managed by Owner and which contains various recreational amenities and open space areas, including without limitation golf course and related facilities, ski trails and ski-in ski-out access trails (the "**Recreational and Open Space Areas**"); and

**WHEREAS**, Owner is the owner of a parcel of land located within the Resort (the "**Project Land**"), as more particularly described on Exhibit A attached hereto and incorporated herein by reference; and

**WHEREAS**, Owner contemplates deeding the Project Land to LP (the "**Deed**") and LP plans to construct two commercial buildings and associated infrastructure and other improvements on the Project Land dedicated to condominium ownership (collectively, the "**Project Improvements**") and together with the Project Land collectively referred to herein as the "**Project**"); and

**WHEREAS**, the Project Improvements, at buildout, are projected to comprise up to three (3) condominium units ("**Units**") and appurtenant common and limited common elements housed in two (2) structures (the "**Buildings**"), one of which will contain a hotel and commercial services and the other of which will contain administrative offices, a grocery store and deli; and

**WHEREAS**, concurrent herewith or subsequent hereto, LP has created or will create the condominium regime for the Project by recordation of that certain Declaration of Condominium for Jay Peak Hotel Suites Phase II in the land records of the Town of Jay, Vermont (the "**Declaration**"); and

**WHEREAS**, Owner intends it will develop other improvements within the Resort; and

**WHEREAS**, the owners of condominium units ("Unit Owners") in the Buildings and their guests will need to cross over and use various portions of the Project and the Resort in order to provide access, ingress and egress to and from their Units and the Project common areas; and

**WHEREAS**, LP and Owner have agreed to grant certain non-exclusive easements of access and use over the Project (Owner to the extent it has reserved various easements and rights of access and use in its Dced to LP), for the Association and for the benefit of its members, and directly to the Unit Owners for their benefit and the benefit of their guests; and

**WHEREAS**, it is important that Owner, in its capacity as the master developer of the Resort, maintain and operate the Project in connection with its maintenance and operation of the Recreational and Open Space Areas and the recreational amenities located on portions of the Recreational and Open Space Areas, and in order to maintain the uniform look and feel of the Resort; and

**WHEREAS**, as such, with LP's and Association's consent as set forth herein, Owner has agreed to operate and maintain the roadways and other improvements located thereon which will provide access to the Project Improvements, and in consideration thereof, the Association, on behalf of its members, has agreed to pay for a portion of the cost of operating and maintaining the easements granted herein; and

**WHEREAS**, Owner and LP, by recordation of this Agreement, now wish (i) to grant an easement to the Unit Owners and to the Association for the benefit of its members, over all of the Project for the purpose of access, ingress and egress to and from the Project and other improvements which may be located on the Project Land; and (ii) to set forth the obligation of the Association and its members to pay for a portion of the cost of operating and maintaining the easements and the roadways and other improvements located thereon;

**NOW THEREFORE**, for and in consideration of the mutual premises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions.** Unless the context otherwise requires, the capitalized terms used in this Agreement shall have the meanings ascribed to them in the Declaration.

2. **Grant of Easement.** Subject to all covenants, conditions, restrictions, reservations, encumbrances, rights-of-way, public dedications, easements and other matters of record in the Land Records of the Town of Jay, Vermont or the applicable District Environmental Conservation office, Owner and LP hereby grant (i) to the Association, and its successors and assigns, for the Association's benefit and for the

including without limitation the Jay Peak Hotel Suites Phase I Owners Association, Inc. and the condominium unit owners in Jay Peak Hotel Suites Phase I. Further, all use of the Resort is subject to Owner's right, in its sole discretion, to limit or restrict access to, or charge fees in connection with the usage of, certain portions of the Resort that are part of its systems of ski or snowboarding trails or other recreational or maintenance facilities, provided that such limitations or restrictions do not unreasonably restrict access to Project Improvements or other improvements located on the Project Land; and use of the Project and Resort shall be subject to such reasonable rules and regulations as Owner may impose in connection with the health, welfare and safety of the residents and visitors to the Resort, in order to preserve and protect the natural beauty of the Resort, and in connection with the operation by Owner of the recreational aspects of the Resort, including without limitation golf facilities, ice skating, bowling, water sports and ski and snowboarding trails.

4. **Limitations on Use of Project.** The Project shall not be used by Owner, LP or any of the Grantees for any uses which would materially interfere with any other parties' use of the Project as provided herein and they shall not construct or place any structures or objects on the Project (other than by LP or Owner for the purposes of roadway and building construction, paving, grading, landscaping or the like, or construction and renovation of improvements as contemplated in this Agreement). The Grantees shall not permit or license any use of the Project except as may otherwise be allowed under this Agreement.

5. **Character of Easements.** The easements granted and reserved herein are and shall run with the land and be appurtenant to, and run to the benefit of the Project Land then existing from time to time and of the Resort.

6. **Maintenance and Costs of Project.**

(a) The Project Land and all improvements thereon shall be managed, operated and maintained by Owner or its designee. All improvements and landscaping, roads, trails, walkways, signage, area lighting, utilities and parking areas shall be maintained by Owner in good condition and repair, including, but not limited to, keeping the access roads plowed and in a generally safe condition, and keeping such areas reasonably free and clear of debris, rubbish and other similar material, and in compliance with all applicable federal, state and municipal laws and ordinances.

(b) The Association agrees to pay Owner all of the annual costs incurred in connection with such management, operation and maintenance, including without limitation, the cost of repairing, replacing and maintaining the landscaping, parking lots (including overlays and striping of asphalt), roads (including overlays of asphalt), stormwater works, walkways, lighting (including electrical charges), the replacement of dead plants, bushes, flowers and trees and the planting of annual flowers, mowing of grass, snowplowing, property taxes and assessments imposed by any regulatory authority, utility charges and fees of local governments, insurance, fire protection fees, and any other related costs (the "Costs").

benefit of its members, employees, agents, invitees, guests; and (ii) to the Unit Owners, their successors, assigns, for their benefit and for the benefit of their respective invitees and guests (collectively, the "Grantees"), a perpetual, non-exclusive easement on, over, along, across, through, above and below the Project and the Resort, as described in Exhibits A and B; including without limitation an easement to use all walkways, hallways and any other connecting passageways between the Project Improvements and other improvements located on the Resort, including without limitation a golf clubhouse, indoor water park, indoor ice arena and bowling center. Said easement is granted for the following purposes: (a) ingress and egress to and from the Buildings, Units and any other Project Improvements, and other improvements located on the Project Land, from Town Highway No. 242, and from the interior roadways lying within the Resort; (b) motor vehicle parking and lighting; (c) the use of walkways, hiking, downhill and cross country ski and snowboarding trails within the Resort, subject to the rights of Owner and LP to restrict or limit access to, and charge fees in connection with the use of such areas as provided in Sections 3 and 4 below; and (d) the construction, installation, maintenance, repair and use of overhead and underground utilities and other appurtenant works, including without limitation, electricity, water, sewer, telephone and cable utilities in those locations as finally constructed and in such additional locations as may be reasonably necessary from time to time to provide reliable and adequate utility services to the Project Improvements. The easement granted hereby shall not by itself entitle any of the Grantees to enter or use the facilities and structures located within the Resort, and shall not preclude Owner from constructing further permanent structures and other improvements in the Resort.

**3. Use of Project and Resort by Owner, LP and Others.** Except as provided in Section 4 hereof, nothing contained in this Agreement shall limit the ability of Owner or LP, or their contractors, employees, agents, invitees, guests, staff, prospects, licensees, lessees, and customers from using the Project or Resort for all lawful purposes authorized by Owner or LP, including without limitation for constructing, installing, laying, re-laying, operating, restoring, repairing, using and maintaining: (i) structures and improvements located or to be located on or adjacent to the Project; (ii) roads, walkways, culverts, stormwater drainage works, parking areas, lighting, and directional and sales signage; (iii) downhill skiing, snowboarding, cross country skiing and hiking trails, golf and other recreational facilities in existing locations on the Resort and in other locations that may be established in the future by Owner in its sole discretion, including without limitation a golf clubhouse, indoor water park, indoor ice arena and bowling center; (iv) landscaping and gardens in such locations and in such vegetative varieties as Owner or LP in their sole discretion may determine from time to time; (v) overhead and underground utilities, including without limitation, electricity, water, sewer, telephone and cable utilities, hookups, connections, pipelines, electrical wires, and appurtenant works; and to grant to the appropriate utility service providers such easements as they may reasonably require in connection therewith; and (vi) other structures and works reasonably necessary to effectively obtain the benefit of the aforesaid easement rights; and in connection therewith, to use maintenance and other equipment in the Project or in the Resort. In addition, nothing contained in this Agreement shall prohibit LP or Owner from granting other easements or licenses to use the Project or Resort to third parties,



shall have the right to all legal and equitable remedies allowed by law, including without limitation, payment of all costs of enforcement of the provisions of this paragraph. In addition to the foregoing, in the event the Association shall breach its payment obligations under Section 6 hereof, Owner shall have the right, if such default is not remedied within thirty (30) days of written notice thereof to the Association, to cease all performance of its obligations hereunder, in addition to taking all other actions as may be allowed by law.

9. **Successors and Assigns.** The terms, covenants and conditions herein contained shall apply to and be binding upon and inure to the benefit and the burden, as the case may be, of the employees, tenants, subtenants, agents, invitees, guests, licensees, lessees, grantees, heirs, grantees, successors and assigns of Owner, LP, the Grantees, and any mortgagees as their interest may appear.

10. **Insurance.** LP and the Association each hereby covenant and agree to maintain comprehensive general liability coverage over the Project with limits of liability in the amount of \$\_\_\_\_\_ per occurrence or such other amount as is subsequently agreed to in writing between the parties, and naming the other party as an additional named insured. LP hereby covenants and agrees to maintain fire and hazard insurance covering all improvements located within the Project, said coverage to be in the full replacement value of such improvements. Said insurance policies may be under one or more umbrella policies of insurance.

11. **No Agency.** It is hereby expressly agreed and understood that in the performance of the terms herein provided, each party hereto shall be deemed to be independent of the other party and not agents, partners, employees or co-venturers of such other party.

12. **Notices.** All notices which either party hereto desires or is required to give the other party under this Agreement shall be in writing and shall be deemed to have been duly given upon being delivered personally or three (3) business days after being deposited in the United States mail as certified or registered mail, postage prepaid, receipt requested, and addressed as follows:

TO THE ASSOCIATION: Jay Peak Hotel Suites Phase II Owners Association,  
Inc.  
4850 VT Route 242  
Jay, Vermont 05859-9621

TO LP: Jay Peak Hotel Suites Phase II L.P.  
4850 VT Route 242  
Jay, Vermont 05859-9621

TO OWNER: Jay Peak, Inc.  
ATTN: William Stenger, President  
4850 VT Route 242

(c) The Owner or its designee shall prepare and distribute to the Association an estimated budget of the Costs at least 3 months prior to the beginning of each calendar year. The Association shall include the Costs in the Association's annual budget each year, to be paid by the Owners as an Assessment under the Declaration. One-twelfth (1/12<sup>th</sup>) of the annual Costs shall be paid each month by the Association to Owner. The Association's obligation to pay such monthly amounts shall continue irrespective of whether or not the Association has collected such amounts from its Owners. At the end of each calendar year, Owner shall render an accounting of the Costs and send a notice to the Association of (i) any additional annual Costs to be paid if the actual Costs for that year exceed the proposed budgeted Costs, or (ii) any overpayment to be credited against the Association's portion of the next year's Costs. Any additional annual Costs due shall be paid by the Association within 60 days of receipt of the notice of underpayment.

7. **Owner's and LP's Right to Transfer and Assign.** Owner and LP shall have the right to: (i) transfer, convey or assign all or a portion of Owner's or LP's right, title and interest in and to the Resort and/or Project Land which is subject to the easements granted herein, pursuant to deed, agreement, assignment, lease, sublease or other instrument, including, but not limited to, the right to dedicate and transfer from time to time all or portions of the streets and roads to governmental entities for public use as public highways, at which time all private rights in said roads (including without limitation the rights granted under this Agreement), shall thereupon terminate and be of no further force and effect; and (ii) assign and delegate all or any portion of Owner's or LP's rights, duties and obligations under this Agreement to any third party, or to the Association, which assignment and delegation the Association agrees to accept and assume upon request by Owner or LP. Upon the delivery of a fully executed, written assignment and assumption agreement, executed by Owner and LP and the Association (or other third party), Owner and LP shall be fully released from any rights, duties or obligations hereunder, and the Association (or other third party, as applicable) shall be Owner's or LP's lawful and valid successors and assigns, as applicable.

8. **Failure to Perform Obligations.** Should any of the parties hereto fail to perform its obligations (the "Defaulting Party") as set forth in this Agreement within thirty (30) days after receipt of written notice from the other party (the "Nondefaulting Party"), or, in the event of an emergency, within six (6) hours after verbal notice by such Nondefaulting Party, then the Nondefaulting Party shall have the right and license, but not the obligation, to remedy the default, which in the case of maintenance and repair may involve entering upon the affected Project Land or Resort and performing the obligations of the Defaulting Party. Such Nondefaulting Party shall thereafter be entitled to be, and shall be, reimbursed by the Defaulting Party for any and all of the costs and expenses actually and reasonably incurred in the performance of said obligations, together with interest thereon at the maximum rate permitted by law, within ten (10) days after the Nondefaulting Party delivers to the Defaulting Party a written demand therefor; provided that said costs and expenses are verifiable with copies of invoices. If the Defaulting Party does not so reimburse the Nondefaulting Party, the Nondefaulting Party

13. **Indemnification.** Each party hereto shall hold harmless and indemnify the other party, and as the case may be, its employees, agents, directors, shareholders, owners, partners, members, officers and legal representatives (collectively, the "Indemnitees") from and against any and all losses, expenses, damages, claims, costs (including reasonable attorneys' fees), liabilities and judgments (collectively, the "Claims") which the Indemnitees may suffer or incur in connection with, resulting or arising from, in any manner whatsoever, directly or indirectly, from the willful misconduct of the indemnifying party, its agents, employees, and with respect to the Association, its members; provided that said indemnification shall not include any Claims resulting from the Indemnitees' gross negligence or willful misconduct with respect thereto.

14. **Mortgage Protection Clause.** No breach of any of the terms and conditions herein contained, nor the enforcement of any of the provisions herein, shall defeat, render invalid, diminish or impair the lien of any mortgage on any part of the Project Land or Resort made in good faith and for value.

15. **Amendment.** This Agreement may be amended jointly by Owner and LP at any time, without the prior consent of Association, for the following purposes: (i) to modify the provisions of Section 6 and other provisions of this Declaration in the event there exist, from time to time, owners of property and improvements within the Project Land other than Unit Owners subject to the condominium regime created by the Declaration, in order to provide for an equitable allocation of the costs of operating and maintaining the Project, and to amend or modify any other provisions of this Agreement in connection therewith; (ii) to clarify any ambiguity in this Agreement, or inconsistency between this Agreement and the Declaration; (iii) in connection with any registration for offer and sale of the Project or other improvements located from time to time on the Project Land with any local, state or federal authority, or in connection with the permitting for any improvements to be constructed on the Project Land; and (iv) for any other purpose that does not result in a material change or modification in the rights of the Grantees. All other amendments to this Agreement must be agreed to by Owner, LP and the Association. All amendments to this Agreement shall be recorded in the land records of the Town of Jay, Vermont.

16. **Miscellaneous Provisions.**

(a) If any term or provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, then such term shall be deemed severed herefrom and all other remaining terms and provisions of this Agreement shall be deemed valid and enforceable to the fullest extent possible.

(b) The provisions of this Agreement shall not be deemed to constitute a dedication for public use or to create any right in the general public.

(c) In any legal or equitable proceeding for the enforcement of, or to restrain the violation of, this Agreement or any provision hereof, the losing party shall pay the attorneys' fees of the prevailing party in such amount as shall be fixed by the court in such proceedings.

(d) This Agreement is made in the State of Vermont and its validity, construction, and all rights under it shall be governed by Vermont law.

(e) This Agreement, executed as of the date hereof, shall take effect only upon, from and after its recordation in the Land Records of the Town of Jay, Vermont, and thereafter any and all other documents purporting to grant the rights conferred herein shall terminate and be of no further force or effect.

(f) This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereunto execute this instrument as of date first above written.

In presence of:

JAY PEAK, INC.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

William Stenger, President and  
Its duly authorized agent

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, SS:

At \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2008, William Stenger personally appeared and acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Jay Peak, Inc.

Before me \_\_\_\_\_

Notary Public

My commission Expires: \_\_\_\_\_

**JAY PEAK HOTEL SUITES PHASE II L.P.**

By: Jay Peak Management, Inc., its  
General Partner

\_\_\_\_\_  
Witness

By

\_\_\_\_\_  
William Stenger, President and  
Its duly authorized agent

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2008, William Stenger personally  
appeared and acknowledged this instrument, by him sealed and subscribed, to be his free  
act and deed and the free act and deed of Jay Peak Management, Inc. and of Jay Peak  
Hotel Suites Phase II L.P.

Before me \_\_\_\_\_

Notary Public

My commission Expires: \_\_\_\_\_

**JAY PEAK HOTEL SUITES  
PHASE II OWNERS  
ASSOCIATION, INC.**

\_\_\_\_\_  
Witness

By

\_\_\_\_\_  
William Stenger, President and  
Its duly authorized agent

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, SS.

At \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2008, William Stenger personally  
appeared and acknowledged this instrument, by him sealed and subscribed, to be his free  
act and deed, and the free act and deed of Jay Peak Hotel Suites Phase II Owners  
Association, Inc.

Before me \_\_\_\_\_

Notary Public

My commission Expires: \_\_\_\_\_

**DRAFT FORM OF  
COMMERCIAL LEASE**

**THIS COMMERCIAL LEASE** (the "Lease") is made this \_\_\_\_ day of \_\_\_\_\_, 2008, between **JAY PEAK INC.**, a Vermont corporation with its principal place of business at 4850 VT Route 242, Jay, Vermont 05859-9621 (hereinafter referred to as the "Landlord"), and **JAY PEAK HOTEL SUITES PHASE II L.P.**, a Vermont limited partnership with its principal place of business at 4850 VT Route 242, Jay, Vermont 05859-9621 (hereinafter referred to as the "Tenant").

1. **Demise, Description of Premises.** Landlord does hereby demise, let, rent, and lease unto the Tenant, and the Tenant hereby hires and rents from the Landlord, certain premises located at the Jay Peak Resort in Jay, Vermont 05859 (the "Resort"), being a multi-story building on the southerly side of Route 242 adjacent to the Jay Peak Championship Golf Course, including all equipment, furniture and fixtures located or installed therein (the "Premises").
2. **Term of Lease.** The Premises are hereby leased to Tenant, subject to all of the terms and conditions contained in this Lease, for a term of ten (10) years commencing \_\_\_\_\_, 200\_\_ and ending \_\_\_\_\_, 201\_\_, unless sooner terminated as hereinafter provided or pursuant to the terms of a Limited Partnership Agreement governing the Tenant's operations and acknowledged by the Landlord by its signature below (the "Term").
3. **Rent.** Tenant agrees to pay to Landlord rent in the amount of \$10.00 per calendar year during the Term. The Tenant shall not pay any other amount whatsoever for the rights granted to the Tenant pursuant to this Lease.
4. **Use of the Property.**
  - (a) The Premises will be used solely for the purpose of the operation of a golf clubhouse and all related amenities and activities, including without limitation locker rooms, pro shop, cart storage room and eating and drinking facilities as incorporated into the Premises, all to be operated for the benefit of all members and guests of the Resort. No other, different, or additional use of the Premises, other than as a Nordic skiing center in the winter, shall be permitted except with the prior written consent of the Landlord. At no time will the Premises be used for illegal or immoral purposes. If the Tenant's use of the Premises necessitates application for zoning or planning approval or compliance with other municipal or state regulations at any time during the Term, Tenant will prosecute and bear the costs of such applications necessary to obtain compliance and approval.
  - (b) The Tenant, through its general partner, is obligated hereunder to operate and manage the Premises, using its reasonable best efforts to maximize income, and to oversee any third parties' operation of the Premises or any business function therein. The Landlord by its signature to this Lease acknowledges, however, that Tenant through its general partner will delegate its duty to operate the Premises to an affiliate of the

general partner (the "Affiliate") for compensation to be paid by the Tenant in an amount equal to seventy-five percent (75%) of the gross income derived from the Premises, from which the Affiliate will pay all of the day to day operating, management and marketing costs of the Premises including food and beverage costs, and ensure adequate staffing levels to operate the Premises.

5. **Insurance, Utilities, and Taxes.** The Tenant shall be responsible for and pay all charges for heat, gas, hot water, electricity, light and power, and other service or services furnished to the demised Premises. Tenant shall be responsible for insuring the Premises against fire and other casualty losses. Tenant shall be responsible for and pay all real estate taxes regarding the Premises.
6. **Alterations.**
  - (a) Except as hereinafter expressly provided, the Tenant shall not make or permit to be made any alterations, additions, changes or improvements in or to the Premises or any part thereof without first obtaining the written consent of the Landlord. Landlord may make any alterations, additions, changes or improvements in or to the Premises or any part thereof without consent of the Limited Partners.
  - (b) Before requesting the Landlord's consent, the Tenant shall submit to the Landlord a copy of the detailed plans and specifications of such proposed alterations, changes, additions or improvements, together with reasonable evidence of the approval of such alterations, additions, changes, or improvements by any and all municipal, state, federal, or other governmental or other authorities, offices, and departments now existing or hereafter created having jurisdiction in the Premises.
  - (c) The Landlord and Landlord's agents and employees shall have the right to enter upon the Premises in a reasonable manner and at all reasonable times during the course of any such alterations, additions, changes, or improvements for the purpose of inspection and determining whether such work conforms to the approved plans and specifications and the terms of this Lease.
  - (d) Throughout the Term, the Tenant, at its own cost and expense, will cause any and all mechanics' liens and perfection of the same which may be filed against the Premises to be paid and satisfied of record within thirty (30) days after the Landlord sends to the Tenant written notice by registered mail of the filing of any notice thereof against the Premises or the Landlord, for or purporting to be for labor or materials alleged to be furnished or to be charged by or for the Tenant at the Premises, or will bond such mechanics' liens and use reasonable efforts to have such liens discharged by an order of a court of competent jurisdiction within such thirty (30) day period.
  - (e) The Tenant also covenants and agrees that any alterations, improvements, or other work once begun will be prosecuted with reasonable diligence to completion and, subject to the provisions of Section 6(d) above, be paid for by Tenant, free and clear

- (f) Notwithstanding anything herein to the contrary, Landlord with reasonable advance notice to Tenant may make alterations, additions, changes or improvements in or to the Premises or any part thereof without first obtaining the written consent of the Tenant, provided such alterations, additions, changes or improvements do not substantially alter the character of the Premises or the essential business purpose of the Premises.
7. **Tenant to Comply With Laws, Etc.** The Tenant, at its own cost and expense, will promptly execute and comply with any and all requirements arising at any time affecting the Premises imposed by any present or future law, statute, or governmental authority now existing or hereafter created, foreseen or unforeseen, and with any and all present and future statutes, laws, ordinances, acts, rules, regulations, orders, and requirements of every kind and nature applicable to the Premises or any part thereof and all requirements incidental to or the result of any use or occupation thereof. The Tenant shall further so comply with each and every rule, order, and requirement of any national, state, municipal, legislative, executive, judicial, or other governmental body, commissioner, or officer or of any bureau or department thereof, whether now existing or hereafter created, having jurisdiction over the Premises or any part thereof or exercising any power relative thereto or to the owners, tenants, or occupants thereof. Tenant, however, will not be responsible for any conditions of the Premises or any hazardous substance, as defined by federal and state laws and regulations, that are located at, on, or in the Premises that existed at the commencement of the Term or are not caused by, or in the case of hazardous substances, not placed on or in the Premises by the Tenant. In addition, Tenant shall comply with all rules of the Landlord governing the operation of the Resort and the Premises.
8. **No Waiver.** The failure of the Landlord to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions, and agreements of this Lease, or to exercise any option herein conferred, shall not be considered as waiving or relinquishing for the future any such terms, covenants, conditions, agreements, or options, but the same shall continue and shall remain in full force and effect.
9. **Landlord's Right of Access.** Landlord and Landlord's agents and employees shall have the right to enter the Premises in a reasonable manner and at all reasonable times to examine the same and to show them to prospective investors, purchasers, mortgagees, or lessees.
10. **Mortgages.** This Lease is specifically made subject to and subordinate to any mortgage now existing or placed upon the Premises by Landlord, and Tenant shall execute any documentation required by any mortgagee to effect such subordination. Notwithstanding the previous sentence, the terms of this Lease shall continue in full force and effect so long as Tenant is in compliance therewith, and any mortgagee or subsequent owner of the Premises shall be bound by the terms of this Lease and not disturb Tenant's occupancy of the Premises provided Tenant attorns to said mortgagee or subsequent owner.
11. **Condition of Premises.** The Tenant has been afforded full opportunity to examine and inspect the Premises and hereby acknowledges and agrees that Tenant is leasing the improvements on the Premises in an "as is" condition, and the Landlord has made no



of liens or encumbrances against the Premises or the Landlord, and will be performed in all respects in accordance with governing law.

- (f) Notwithstanding anything herein to the contrary, Landlord with reasonable advance notice to Tenant may make alterations, additions, changes or improvements in or to the Premises or any part thereof without first obtaining the written consent of the Tenant, provided such alterations, additions, changes or improvements do not substantially alter the character of the Premises or the essential business purpose of the Premises.

7. **Tenant to Comply With Laws, Etc.** The Tenant, at its own cost and expense, will promptly execute and comply with any and all requirements arising at any time affecting the Premises imposed by any present or future law, statute, or governmental authority now existing or hereafter created, foreseen or unforeseen, and with any and all present and future statutes, laws, ordinances, acts, rules, regulations, orders, and requirements of every kind and nature applicable to the Premises or any part thereof and all requirements incidental to or the result of any use or occupation thereof. The Tenant shall further so comply with each and every rule, order, and requirement of any national, state, municipal, legislative, executive, judicial, or other governmental body, commissioner, or officer or of any bureau or department thereof, whether now existing or hereafter created, having jurisdiction over the Premises or any part thereof or exercising any power relative thereto or to the owners, tenants, or occupants thereof. Tenant, however, will not be responsible for any conditions of the Premises or any hazardous substance, as defined by federal and state laws and regulations, that are located at, on, or in the Premises that existed at the commencement of the Term or are not caused by, or in the case of hazardous substances, not placed on or in the Premises by the Tenant. In addition, Tenant shall comply with all rules of the Landlord governing the operation of the Resort and the Premises.
8. **No Waiver.** The failure of the Landlord to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions, and agreements of this Lease, or to exercise any option herein conferred, shall not be considered as waiving or relinquishing for the future any such terms, covenants, conditions, agreements, or options, but the same shall continue and shall remain in full force and effect.
9. **Landlord's Right of Access.** Landlord and Landlord's agents and employees shall have the right to enter the Premises in a reasonable manner and at all reasonable times to examine the same and to show them to prospective investors, purchasers, mortgagees, or lessees.
10. **Mortgages.** This Lease is specifically made subject to and subordinate to any mortgage now existing or placed upon the Premises by Landlord, and Tenant shall execute any documentation required by any mortgagee to effect such subordination. Notwithstanding the previous sentence, the terms of this Lease shall continue in full force and effect so long as Tenant is in compliance therewith, and any mortgagee or subsequent owner of the Premises shall be bound by the terms of this Lease and not disturb Tenant's occupancy of the Premises provided Tenant attorns to said mortgagee or subsequent owner.

belong solely to Landlord and any award for partial condemnation attributable solely to the Tenant shall belong solely to Tenant.

16. **Personal Property.** Tenant shall be solely responsible for all personal property placed upon the Premises during the Term and renewals hereto, if any, which responsibility shall include by way of illustration and not by way of limitation, payment of all taxes and fees assessed against the personal property and insurance for all personal property. At the expiration or earlier termination of this Lease, all personal property located in or installed on the Premises shall remain the property of Landlord.
17. **Default.** If any one or more of the following events ("Events of Default") shall happen:
  - (a) If default shall be made in the due and punctual payment of rent payable under this Lease, or any part thereof, when and as the same shall become due and payable, and such default shall continue for a period of fifteen (15) days after the Tenant receives written notice from Landlord that such rent has not been paid; or
  - (b) If default shall be made by Tenant in the performance or compliance with any of the agreements, terms, covenants, or conditions in the Lease, other than as referred to above, for a period of thirty (30) days after Tenant receives notice from Landlord specifying the items in default, or in the case of a default or contingency that cannot with reasonable due diligence be cured within such thirty (30) day period, if Tenant fails to commence within such thirty (30) day period the steps necessary to cure the same and thereafter to prosecute the curing of such default with reasonable due diligence (it being understood that the time of Tenant within which to cure shall be extended for such period as may be necessary to complete the same with all reasonable due diligence); or
  - (c) If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or if there shall be appointed a receiver or trustee of all or substantially all of the property of the Tenant, or if Tenant shall make any assignment for the benefit of Tenant's creditors, or if the Tenant shall vacate the Premises, and any such condition shall continue for a period of thirty (30) days after notice from Landlord specifying the matter involved;

then, and in any such event, Landlord at any time thereafter may give written notice to Tenant specifying such event or events of default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, and upon the date so specified, all rights of Tenant under this Lease shall expire and terminate. Thereafter, the Landlord shall use Landlord's best efforts to relet the Premises. Upon any termination of this Lease as above-stated, the Tenant shall immediately vacate the Premises and surrender the same to the Landlord as set forth in Section 20.

18. **Landlord's Covenants.** The Landlord warrants that Landlord has good title to and the right to lease the Premises in manner provided for in this Lease and that Landlord will suffer and permit the Tenant (so long as the Tenant shall materially keep all the covenants on its part, as

18. **Landlord's Covenants.** The Landlord warrants that Landlord has good title to and the right to lease the Premises in manner provided for in this Lease and that Landlord will suffer and permit the Tenant (so long as the Tenant shall materially keep all the covenants on its part, as herein contained) to occupy, possess, and enjoy the Premises during the Term, without hindrance or molestation from Landlord or any person claiming by, from, or under Landlord.
19. **Quiet Enjoyment.** Landlord covenants that the Tenant, on paying all rent required to be paid by Tenant, and materially performing the other covenants and undertakings by the Tenant to be performed, shall and may peaceably have and enjoy the Premises for the Term in accordance with the terms of this Lease.
20. **Removal and Surrender.** The Tenant will, at the expiration or earlier termination of this Lease, peaceably surrender the Premises and all improvements thereon, and Tenant will execute all documents necessary to place marketable title to all improvements in Landlord's name or Landlord's nominee's name, subject only to (a) the mortgages existing at the time of commencement of this Lease, (b) any changes or additions to which Landlord consented pursuant to Section 6, and (c) any easements, rights of way, conditions, or other encumbrances existing at the commencement of this Lease.
21. **Waste or Nuisance.** Tenant shall not commit or suffer to be committed any waste upon the Premises or any act that constitutes a public or private nuisance.
22. **Holding Over.** Any holding over after the expiration of the Term shall not be construed to be a tenancy from month to month. In no instance will the Term of this Lease extend past \_\_\_\_\_, 201\_, and Tenant acknowledges that Landlord will incur and suffer severe damages entitling Landlord to sue Tenant for such damages, in addition to any eviction or repossession suit Landlord brings, if Tenant holds over after the expiration of the Term of this Lease.
23. **Successors and Assigns.** All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the respective successors and assigns of the parties, subject to Section 13 above.
24. **Entire Agreement, Applicable Law.** This Lease contains the entire agreement of the parties with respect to the Premises, and no representations, inducements, promises, or agreements not embodied in this Lease shall be of any force or effect, unless the same are in writing and signed by or on behalf of the party to be charged. The captions of particular Sections are inserted as a matter of convenience only and in no way affect or define the scope or intent of this Lease. This Lease shall be governed by and interpreted in accordance with the laws of the State of Vermont, without regard to conflict of law principles.
25. **Partial Invalidity.** If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be

26. **Waiver of Rule of Construction.** The parties waive the benefit of any rule that this Lease is to be construed strictly against one party or the other by virtue of the circumstances of the drafting of this Lease.

27. **Notices.** All notices, requests, and other communications hereunder shall be in writing and delivered and mailed:

(a) If to Landlord, to Jay Peak Inc., 4850 VT Route 242, Jay, Vermont 05859-9621 or at such other address as may be furnished to Tenant by Jay Peak Inc. in writing.

(b) If to Tenant, to Jay Peak Management Inc., 4850 VT Route 242, Jay, Vermont 05859-9621, or at such other address as may be furnished to the Landlord by Tenant in writing.

28. **Memorandum of Lease.** The parties agree to prepare and record in the Land Records of the Town of Jay, Vermont a memorandum of this Lease sufficient to satisfy statutory requirements.

IN WITNESS WHEREOF, the parties have executed and delivered this Lease on the date first written above.

IN THE PRESENCE OF:

**JAY PEAK INC.**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
William Stenger, Its President  
and duly authorized agent

**JAY PEAK HOTEL SUITES PHASE II L.P.**  
BY: Jay Peak Management Inc., its General Partner

\_\_\_\_\_  
Witness

BY: \_\_\_\_\_  
William Stenger, its President  
and duly authorized agent

State of Vermont  
County of \_\_\_\_\_, ss.

At \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, personally appeared before me William Stenger, duly authorized agent on behalf of Jay Peak Inc., and acknowledged this instrument, by him subscribed, to be his free act and deed and the free act and deed of Jay Peak Inc.

Before me, \_\_\_\_\_

STATE OF VERMONT  
OFFICE OF SECRETARY OF STATE

The Office of Secretary of State hereby grants a

Certificate of Incorporation

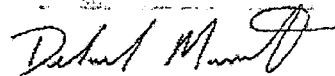
to

JAY PEAK MANAGEMENT INC.

a Vermont domestic corporation, effective December 15, 2006

December 19, 2006

Given under my hand and the seal  
of the State of Vermont, at  
Montpelier, the State Capital



Deborah Markowitz  
Secretary of State



ARTICLES OF INCORPORATION (Vermont profit T.11A)

Vermont Secretary of State, 81 River Street, Montpelier, VT 05609-1104  
Telephone: 802-828-2386; Fax: 828-2853

Corporate Name: Jay Peak Management Inc.

Corp type: General (T. 11A)

State a brief Purpose here: Real estate management and development, and anything legally permitted of corporations in State of Vermont.

Registered agent's name: William Stenger

Registered agent's address: (street, city and zip code in VT) 4580 VT Route 242 Jay, Vermont 05859-9621

Principal office address: (street, city, state and zip code): 4580 VT Route 242 Jay, Vermont 05859-9621

Fiscal operating year end (month): December

Number of shares the corporation is authorized to issue: 1000

Classes of shares (common/preferred/etc.) and number of shares authorized to issue, in each: Common / 1000

One or more classes of shares that together have unlimited voting rights: Common


One or more classes of shares (which may be the same class with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution: Common

DIRECTORS' names and addresses: A board of directors of a corporation which is not a close corporation dispensing with a board of directors must consist of three or more individuals. If the number of shareholders in any corporation is less than three, the number of directors may be as few as the shareholders: William Stenger, 4580 VT Route 242 Jay, Vermont 05859-9621

One or more natural persons of majority age (18) may act as incorporator.

Incorporator's printed name: Mark H. Scribner

Incorporator's signature and address:

  
Mark H. Scribner  
Carroll & Scribner, P.C.  
84 Pine Street, Suite 300  
Burlington, Vermont 05401

Fee is \$75.00. Print and file in duplicate. If a delayed effective date is not specified, it is effective the date it is approved.

E-mail address or phone number where you can be reached: [mscribner@cslaw.us](mailto:mscribner@cslaw.us)  
(802) 862-2855

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PATRICK LEAHY  
VERMONT

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AGRICULTURE, NUTRITION, AND  
FORESTRY  
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## United States Senate

WASHINGTON, DC 20510-4502

August 31, 2006

Mr. Bill Stenger, President  
Jay Peak Resort  
Jay, Vermont 05859

Dear Bill,

I understand that you have several investors who are interested in Jay Peak's business plan for a four-season resort and are considering the Alien Investor Program. I believe that this program is a perfect fit for your investors, and I know it will have a positive economic impact for the Northeast Kingdom.

The USCIS has consolidated the processing of the Alien Investor applications to ensure that the procedures related to the adjudication of these highly technical petitions remain uniform and streamlined. Officers have been appropriately trained in the relevant areas of investment, financial, and economic policy and analysis, and they have the expertise necessary to process these complex matters.

I hope this information is helpful to you in reassuring your investors that the Investor Program continues to be an option for your developmental needs. Bill, please let me know when you have submitted an application, and I will be happy to write a letter of support on your behalf.

Sincerely,



PATRICK LEAHY  
United States Senator

PJL/krb

# FORUM



## *Leahy introduces bill to create jobs*

## **Attract foreign investment to Vermont**

WASHINGTON—Senator Patrick Leahy (D-Vt.) this week introduced legislation to make permanent a program that has attracted millions of dollars in direct foreign investment and created hundreds of new jobs for Vermont. Leahy's legislation would also strengthen the Regional Center pilot program at the U.S. Citizenship and Immigration Services (USCIS).

The Regional Center pilot program was first created in 1993 and allows a regional governmental agency or private entity within a state to apply to the USCIS for designation as a Regional Center. The designation allows agencies or entities involved to attract foreign investment to the region, bringing money and jobs into regional economies. Through Leahy's efforts, Vermont's Regional Center was established in 1997 and rechartered in 2007. Two Vermont ski resorts have actively participated in

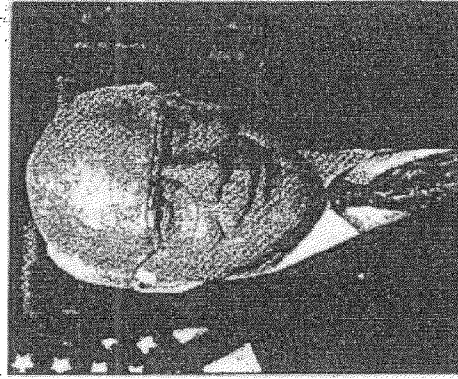
the Regional Center pilot program, launching ambitious development projects to draw more tourism and business to the state, and Vermont's Regional Center has more investment projects in the works.

In turn, Regional Centers provide opportunities to foreign investors to invest in new American projects, as well as an avenue to citizenship, while adding an additional layer of screening against immigration fraud. Foreign investors seeking legal permanent residency through investment must pledge a minimum of \$500,000 to a targeted project within a Regional Center and independently apply for an EB-5 visa. If approved by USCIS, foreign investors are granted a conditional two-year green card. After two years, the investor must provide proof that ten jobs within the region have been created as a result of the investment and that they have met addi-

tional investment requirements set by USCIS.

"There is no question that Vermont has benefited from the Regional Center pilot program," said Leahy. "I was proud to reauthorize the Regional Center program in 2003, and this successful partnership between American entrepreneurs and the USCIS is worth saving. Making this program permanent would promote further long term investment in Vermont, in our industries and in our economy. With the country on the brink of a recession, we should be doing all we can to increase jobs and provide additional access to capital to our local economies."

The Regional Center program has generated millions of dollars in job-creating investments since its inception. There are 17 Regional Centers across the country, including the Vermont center. In 2007 alone, invest-



*Patrick Leahy*

ment through the Regional Centers totaled \$500 million with the creation of 10,000 new American jobs, and USCIS officials have estimated that direct investment through the program will double in 2008.



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For Foreign Investors, Profit Isn't Only Goal

The Jay Peak ski resort in Vermont is building a new hotel, renderings, with the help of foreigners participating in a federal program that grants legal residency in exchange for investing in certain businesses.

By FRED A. BERNSTEIN  
Published: March 16, 2008

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ANYTHING BUT ORDINARY.

Paul O. Boilevert for The New York Times

Bill Stenger says that he has received \$17.5 million from 35 foreign investors.

BRIAN GOULDING recently moved with his wife, Majella, and three young children to Wilmington, N.C. "It's gorgeous here," he said, referring to the region's temperate climate.

But Mr. Goulding also has a strong interest in the colder environs of northern Vermont and, specifically, the success of a new hotel at the Jay Peak ski resort, five miles from the Canadian border. If the hotel, expected to open next fall, succeeds, Mr. Goulding and his family, who are from Ireland, will be allowed to remain in the United States.

The Gouldings are among the beneficiaries of a program that grants foreigners legal residency in the United States if they invest in job-creating businesses. "If, in two years, the project has delivered the employment to the state of Vermont," Mr. Goulding said, he will receive a permanent green card. "If the project collapses," he said, "I won't."

But Bill Stenger, the president and chief operating officer of Jay Peak, doesn't see much danger of the project failing. At a time when bank loans are becoming harder to get, Mr. Stenger said he had received the money he needs to construct the hotel — \$17.5 million — from 35 investors, all of whom are hoping to become permanent residents of the United States.

Under the program, known as EB-5, a foreigner receives a green card for investing \$500,000 in a business in a rural or high-unemployment area. With currency exchange rates what they are — the dollar has fallen sharply against the euro and British pound — the required investment "is very affordable to many foreigners," Mr. Stenger said.

To tap into that source of capital, Mr. Stenger formed an alliance with Rapid USA Visas, which has offices in Naples, Fla., and in London. The company's clients are looking to make their homes in the United States — in many cases, as retirees in the Sun Belt. (Under the law creating the EB-5 visas, they need never set foot in the state where the money is invested.)

"It's win-win-win," said Steve Yale-Loehr, an EB-5 expert who teaches immigration law at Cornell University: the business gets capital, residents get jobs and the investor gets a green card.

The program hasn't always been a hit. In the 1990s, what was then the Immigration and

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Naturalization Service had a hard time keeping tabs on whether EB-5 investments were creating jobs. "There were fears that the program wasn't achieving its intended purpose," Mr. Yale-Loehr said. But the agency, renamed Citizenship and Immigration Services, has since found a way to streamline the process by permitting entities outside the federal government, called regional centers, to screen investors and monitor job creation.

As a result, Mr. Yale-Loehr said, "the EB-5 program has risen from the ashes." Of the 10,000 EB-5 visas available each year, 5,000 are set aside for investors in regional centers.

Altogether, there are 17 regional centers, Mr. Yale-Loehr said, and about that many applications pending. Mr. Stenger said he worked with state and federal officials to win "regional center" designation for the entire state of Vermont.

Right now, Mr. Stenger said, Jay Peak has room for about 1,800 guests; the new, 78,000-square-foot hotel building is part of a plan to nearly triple that capacity. The building will contain 56 one- and two-bedroom suites and one three-bedroom penthouse, Mr. Stenger said. There will also be a day spa, a Vermont country store, several restaurants and a ski rental center in the building.

Mr. Stenger is also planning another hotel and a water park, which will be financed by 150 EB-5 investors and which will help draw visitors year-round.

Jay Peak isn't the only resort to benefit from Vermont's regional center designation. At Sngarbush resort in Warren, Vt., about 60 miles south, an EB-5 program is being used to finance four new buildings. The first — a 40,000-square-foot guest services center, containing stores, equipment rental facilities and space for children's programs — will break ground this spring. Three condominium hotels will follow, beginning in 2009.

EB-5 investors have to show that the money they are using was earned legally. At Jay Peak, all 35 investors passed that test, according to Mr. Stenger, who noted that, in addition to Britain, there were participants from Canada, Mexico, Scandinavia and South Africa. His company, formally called Jay Peak Ski and Summer Resort, held the investors' money in escrow until their applications were approved by the federal government, he said.

Mr. Goulding, who is 48 and semiretired from the airplane leasing business, said he wrote his check last April and received his temporary green card six months later. He said that accounting and legal fees added about 10 percent to his \$500,000 investment. He said he expects to receive a permanent green card in 2009.

AFTER five years, the partnership may choose to sell the hotel's 57 units as condominiums, paying Mr. Goulding his share of the proceeds. Mr. Stenger noted that unlike some businesses that have no tangible assets, the Jay Peak partnership will have the 57 units and the right to sell them. (Technically, each investor will own 1/35 of each one, Mr. Stenger said.)

"The Jay Peak investors appreciate that there's an exit strategy," said Douglas Hulme, the chief executive of Rapid USA Visas, who is based in Naples, Fla.

Mr. Stenger said Jay Peak's EB-5 program is expected to produce 2,000 jobs in the area, which "is very meaningful for this part of Vermont." Some of the 2,000 are what the government calls "indirect jobs," meaning they won't be at Jay Peak itself but at businesses in the surrounding area that will benefit from expansion at the resort.

Mr. Goulding has met with Mr. Stenger, and he said he is satisfied that Jay Peak is "conservatively managed." And it was a good sign, he said, that when Jay Peak drilled for water for the new hotel, "they hit a gusher."

When the new hotel is completed, each investor will be entitled to two weeks' accommodations a year. Mr. Goulding and his family plan to spend those weeks skiing. "Not having a huge amount of snow in Ireland, as in none, Jay Peak provides a wonderful experience," he said.

He won't be checking on the business.

"The beauty of an EB-5 for me," he said, "is that I don't have any day-to-day responsibilities."

The New York Times

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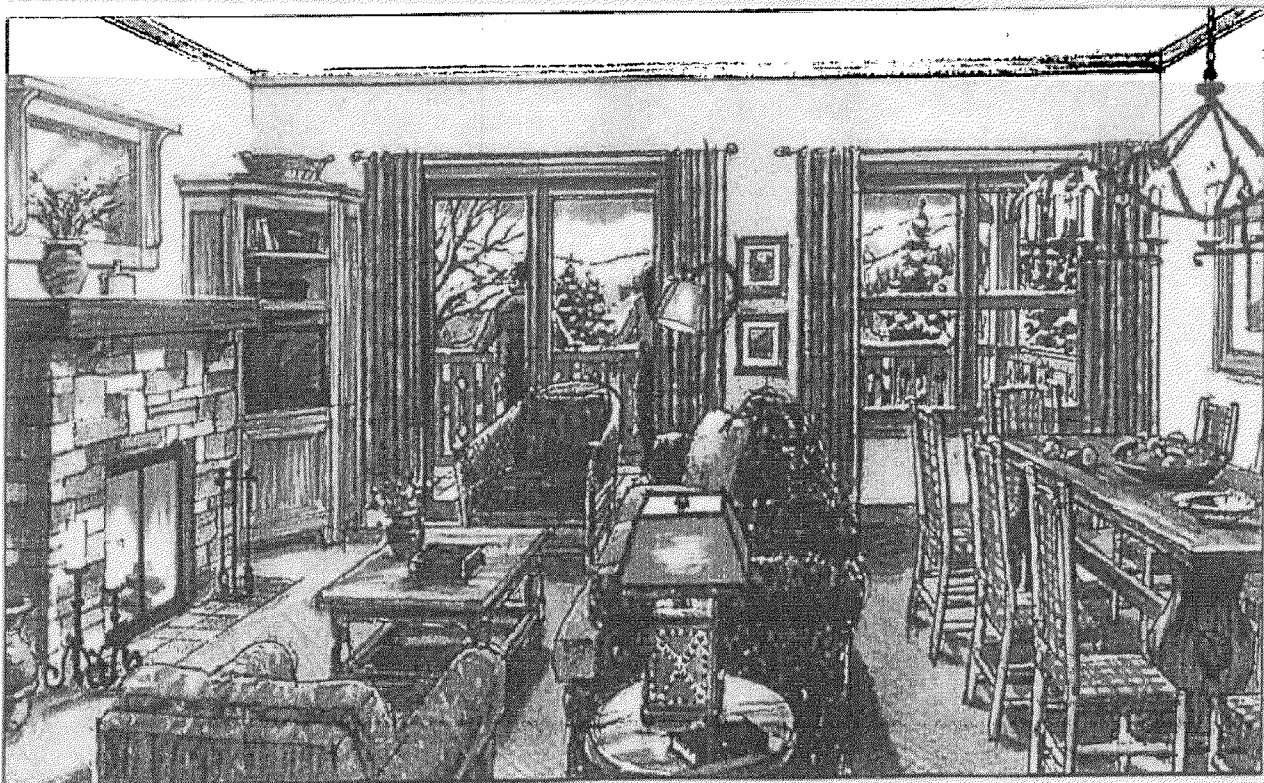
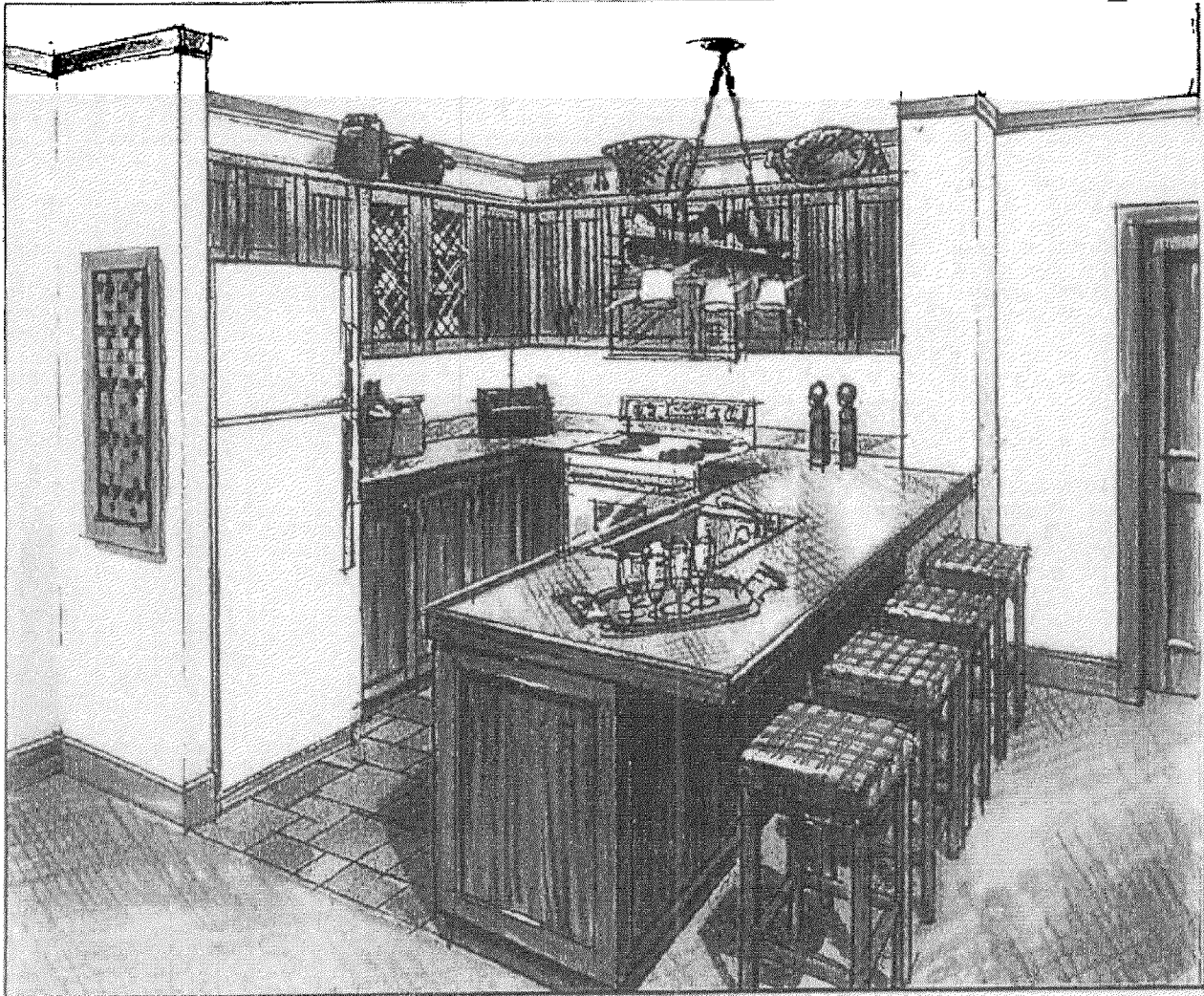
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## EXHIBIT T

OMB No. 1615-0026; Exp. 09/30/08  
**I-526, Immigrant Petition  
 by Alien Entrepreneur**

Department of Homeland Security  
 U.S. Citizenship and Immigration Services

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Classification  _____	Action Block	Fee Receipt
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Remarks:		

**START HERE - Type or print in black ink.**

**Part 1. Information about you.**

Family Name		Given Name		Middle Name	
Address:					
In care of _____					
Number and Street					Apt. #
City	State or Province	Country	Zip/Postal Code		
Date of Birth (mm/dd/yyyy)	Country of Birth	Social Security # (if any)	A # (if any)		
If you are in the United States, provide the following information:		Date of Arrival (mm/dd/yyyy)	I-94 #		
Current Nonimmigrant Status	Date Current Status Expires (mm/dd/yyyy)	Daytime Phone # with Area Code			

**Part 2. Application type. (Check one)**

- a. This petition is based on an investment in a commercial enterprise in a targeted employment area for which the required amount of capital invested has been adjusted downward.
- b. This petition is based on an investment in a commercial enterprise in an area for which the required amount of capital invested has been adjusted upward.
- c. This petition is based on an investment in a commercial enterprise that is not in either a targeted area or in an upward adjustment area.

**Part 3. Information about your investment.**

Name of commercial enterprise in which funds are invested			
Street Address			
Phone # with Area Code	Business organized as (corporation, partnership, etc.)		
Kind of business (e.g. furniture manufacturer)	Date established (mm/dd/yyyy)	IRS Tax #	

RECEIVED: \_\_\_\_\_ RESUBMITTED: \_\_\_\_\_ RELOCATED: SENT \_\_\_\_\_ REC'D \_\_\_\_\_



Form I-526 (Rev. 07/30/07)Y

**Part 3. Information about your investment. (Continued.)**

Date of your initial investment (mm/dd/yyyy)

Amount of your initial investment \$

Your total capital investment in the enterprise to date \$

Percentage of the enterprise you own

If you are not the sole investor in the new commercial enterprise, list on separate paper the names of all other parties (natural and non-natural) who hold a percentage share of ownership of the new enterprise and indicate whether any of these parties is seeking classification as an alien entrepreneur. Include the name, percentage of ownership and whether or not the person is seeking classification under section 203(b)(5). **NOTE:** A "natural" party would be an individual person and a "non-natural" party would be an entity such as a corporation, consortium, investment group, partnership, etc.

If you indicated in **Part 2** that the enterprise is in a targeted employment area or in an upward adjustment area, name the county and state:

County

State

**Part 4. Additional information about the enterprise.****Type of Enterprise (check one):**

- ☐ New commercial enterprise resulting from the creation of a new business.
- ☐ New commercial enterprise resulting from the purchase of an existing business.
- ☐ New commercial enterprise resulting from a capital investment in an existing business.

**Composition of the Petitioner's Investment:**

Total amount in U.S. bank account .....

\$

Total value of all assets purchased for use in the enterprise.....

\$

Total value of all property transferred from abroad to the new enterprise.....

\$

Total of all debt financing.....

\$

Total stock purchases.....

\$

Other (explain on separate paper).....

\$

**Total**

\$

**Income:**

When you made the investment.....

Gross

\$

Net

\$

Now.....

Gross

\$

Net

\$

**Net worth:**

When you made investment.....

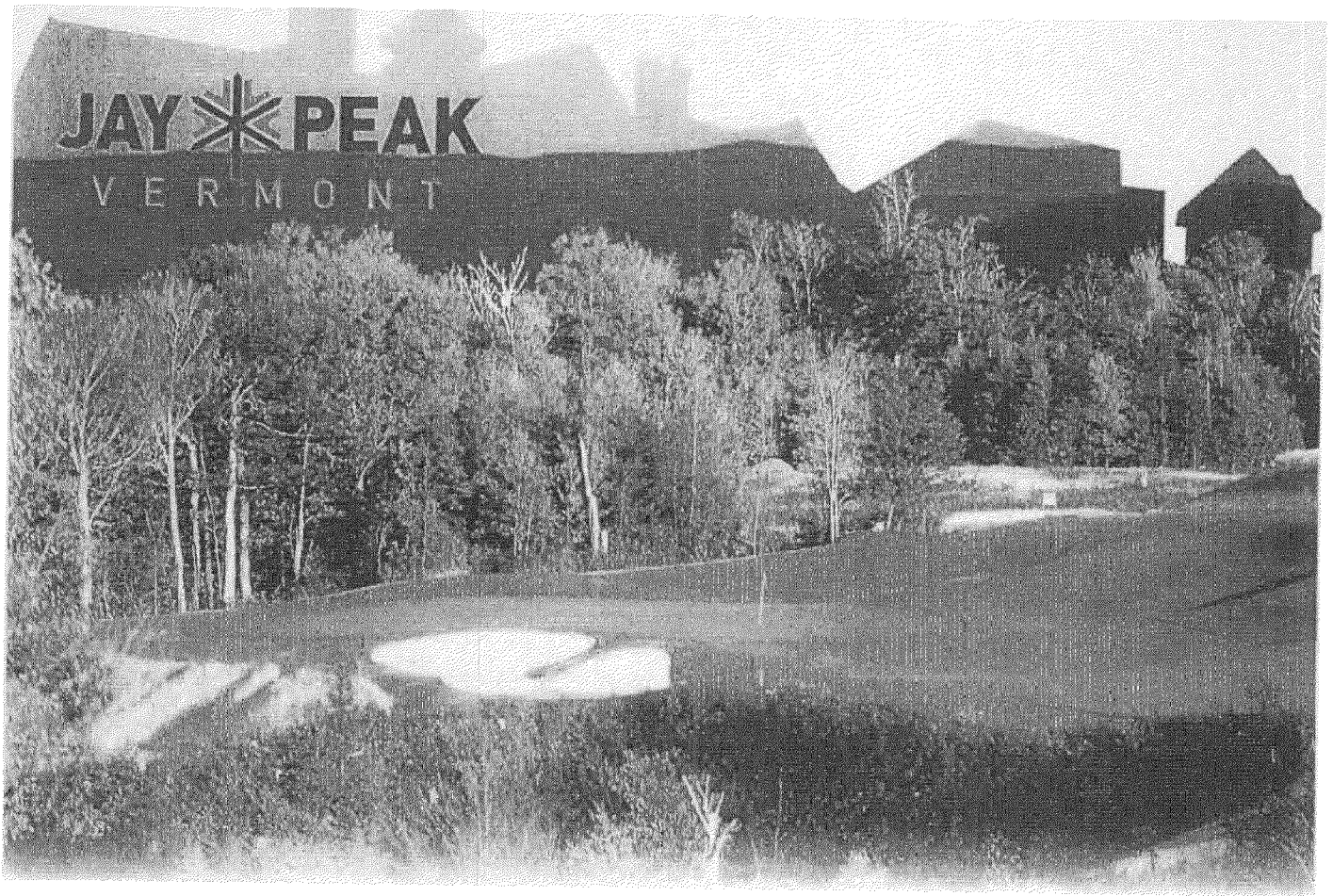
Gross

\$

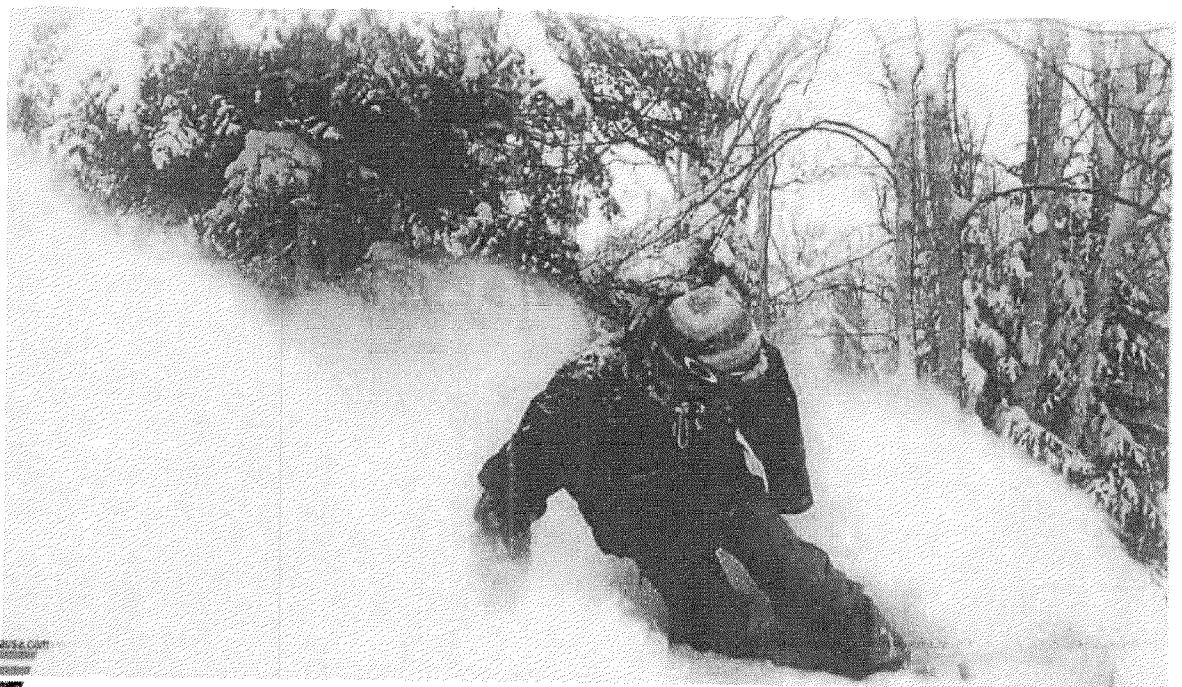
Now

\$





Move up. jaypeak



**B**



# Institutional Trust



VIA E-MAIL: alex@visausa.co.uk ; rapidusa@gmail.com ; valerie@visausa.com ;  
bstenger@jaypeakresort.com



May 15, 2009

Mr. Alex Hulme  
RAPID USA  
RAPID USA

Mr. Douglas Hulme, FCCA  
Chartered Certified Accountant  
RAPID USA

Valerie Hulme  
RAPID USA

Bill Stenger  
Jay Peak

**RE: Ian A Mackechnie**

Dear Mr. Hulme, Mr. Hulme, Ms. Hulme and Mr. Stenger:

This letter is confirmation for receipt of funds in regards to the Jay Peak Escrow – Phase II as follows:

Date: May 15, 2009

Amount: \$540,000.00

Please do not hesitate to contact me at (802) 660-1490 if you have any questions or need additional information.

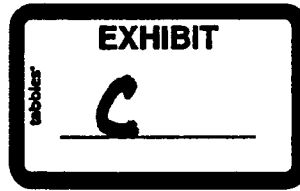
Sincerely,

A handwritten signature in black ink, appearing to read "Debra A. Bilodeau".

Debra A. Bilodeau, CCTS  
Assistant Vice President  
Institutional Trust



December 2012



Phase II Partners:

We opened the 2012/2013 ski season on November 23<sup>rd</sup> and offered top to bottom skiing on schedule. Our ski season looks excellent with outstanding preseason sales and advanced vacations reservations. I also wanted to update you on the progress and status of the Phase II Jay Peak EB-5 project; the Hotel Jay Complex, Waterpark, Ice Arena and Clubhouse.

As you recall from my last report, the Hotel suites opened fully on March 3, 2012. The Conference Center opened this past May. The past six months, typically the slowest months at Jay Peak, have been very promising. We had good weather this summer so outdoor activities were abundant and the golf course was beautiful and very popular.

The Hotel Complex was active and above projections. We have been on the operational shakedown as much training, sales and marketing have gone on and the volume has grown steadily. Reservations are outstanding and the Hotel Jay business level should be at a pace we have been expecting.

The Clubhouse, Ice Arena and Waterpark are all performing as expected or better. The Waterpark was recognized at the recent World Waterpark Expo as best new park in the U.S. and also best marketing campaign.

The key to the business success going forward is our marketing, sales and reservations team to recruit and book business with the highest income per guest we can. Once booked it is vital we serve the guest and exceed expectations.

We are doing a great job of each. Many of you have visited and seen firsthand the kind of hospitality we offer. We are proud of what we do and what we have done together in creating a marvelous facility staffed by great people,

I welcome you to visit our website, [jaypeakresort.com](http://jaypeakresort.com) and see the updates and photos of the facilities.

You will receive more frequent updates as the ski season is our busiest season. I'm so excited to be going into our first season with all Phase II facilities open.

Please know we appreciate you all. We continue to have excellent removal of conditions approval from U.S.C.I.S. and expect that approval pattern to continue to be at 100%.

In the first quarter of the New Year we expect to provide you with a financial update on the projects and the outlook for proceeds payments to each of you. Look for this in March 2013.

If you have questions or contact changes (address or email) please contact Heather Whipkey ([hwhipkey@jaypeakresort.com](mailto:hwhipkey@jaypeakresort.com)) or Tracy Chen ([tchen@jaypeakresort.com](mailto:tchen@jaypeakresort.com)). If you wish to make reservations to visit please contact Karen Bennett ([kbennett@jaypeakresort.com](mailto:kbennett@jaypeakresort.com)) or Lizzy Button ([lbutton@jaypeakresort.com](mailto:lbutton@jaypeakresort.com)).

I wish you a marvelous New Year and hope you and your family are healthy and happy.

Best personal regards,

A handwritten signature in black ink, appearing to read 'Bill Stenger', with a stylized flourish at the end.

Bill Stenger  
President, Jay Peak  
President, General Partner, Jay Peak Management Inc.